



Appeal Decision

Site visit made on 7 December 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

Appeal Ref: APP/D2320/C/20/3258846

**Land to the rear of Nos' 46 and 44 Blackburn Road, Chorley, Lancashire
PR6 8LH**

- 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 Mrs Diana Towers against an enforcement notice issued by Chorley Borough Council.
- The enforcement notice was issued on 6 August 2020.
- The breach of planning control as alleged in the notice is the change of use of the Land to domestic garden.
- The requirements of the notice are to cease the use of the Land as a domestic garden.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal Ref: APP/D2320/C/20/3258848

**Land to the rear of Nos' 46 and 44 Blackburn Road, Chorley, Lancashire
PR6 8LH**

- 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 Mrs Diana Towers against an enforcement notice issued by Chorley Borough Council.
- The enforcement notice was issued on 6 August 2020.
- The breach of planning control as alleged in the notice is a raised platform consisting of two levels has been constructed on the Land replacing the former slope without the benefit of planning permission.
- The requirements of the notice are to remove both levels of the raised platform and reinstate the former slope with a gradient of 1 in 5 (20%), or steeper; with the lower section reduced back to its original level.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural matter

1. Whilst one appeal concerns an alleged material change of use and the other alleged operational development, the two comprise the same appellant and appeal site. As the issues pertaining to the two appeals are the same, I have linked the two appeals together. I do not find that injustice would be caused to any parties by me doing so.
2. A request was made that I view the development from 48 Blackburn Road. However, during my site visit I was satisfied that I could adequately assess the effect of the development on neighbouring properties from the appeal site and the neighbouring track, from which I could clearly see into the rear garden of No. 48. Accordingly, it was not necessary for me to enter No. 48.

Application for costs

3. An application for costs was made by Mrs Diana Towers against Chorley Borough Council. This application is the subject of a separate Decision.

The ground (a) appeals and the deemed planning application

Main issues

4. The main issues are as follows:
 - Whether the development would be inappropriate development in the Green Belt; and
 - The effect of the development on the living conditions of the occupants of neighbouring residential properties, with regard to privacy.

Reasons

Inappropriateness

5. The Council do not rely on any policies within the development plan that relate to development within the Green Belt. However, they refer to the National Planning Policy Framework (the Framework).
6. Paragraph 146 of the Framework identifies certain forms of development that are not inappropriate development in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it.
7. There is no dispute between the parties that the material change of use of the site to domestic garden falls with criterion e) of paragraph 146 and the construction of the raised platform falls within criterion b). Based on the evidence before me, and the observations I made during my site visit, I find no reason to conclude otherwise. Therefore, the crux of the matter is whether the material change in the use of the land to domestic garden and the construction of the raised platform preserve the Green Belt's openness and do not conflict with the purposes of including land within it.
8. Paragraph 133 of the Framework advises 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 has both a visual and spatial dimension and the absence of visual intrusion does not, in itself, mean that there is no impact on the openness of the Green Belt.

9. The appeal site is located to the rear of a row of two-story dwellings fronting onto Blackburn Road. The site is accessed via a track that leads to several detached garages and an allotment to the rear of these dwellings, as well providing access to their rear gardens. The appeal site forms part of a slightly larger site that includes a detached garage. The engineering works that have taken place have resulted in the site being split into two tiers, with a stone retaining wall and steps dividing the two levels.
10. The rear of the site backs onto a wooded embankment, which blocks views of the open land to the east. Views beyond the northern boundary are similarly restricted by trees and shrubs. To the south is an allotment and beyond that are several garages. The change of use of the land and the engineering works have resulted in very little built form being added to the site, with only the low retaining walls and picket fence being visually apparent. Whilst domestic paraphernalia could be brought on to the site, this would not likely include permanent fixtures.
11. I acknowledge the comments received by neighbouring residents stating that the site, at least in part, has been tended to for approximately 33 years and has been used for parking. This suggests that it has been sometime since the site functionally formed part of the wider open land.
12. I have also considered the effect that potential structures or buildings erected on the land under permitted development rights may have on the openness of the Green Belt. However, the site is distinctly separated from 44 Blackburn Road and its rear garden by the access road that intersects the two parcels of land and the boundary fencing around each of them. Therefore, whilst the site is used for domestic purposes, I am not satisfied that it forms part of the curtilage of No 44. Therefore, it does not benefit from permitted development rights.
13. Given the above, I therefore find that the change of use of the land and the engineering works preserve the openness of the Green Belt.
14. I turn now to the question of whether any conflict would arise with the Green Belt's purposes, which are set out in paragraph 134 of the Framework, and include safeguarding the countryside from encroachment. The site is largely enclosed on all sides – by the allotment and garages to the south; the embankment and trees and shrubs to the north and east; and, the dwellings, their rear gardens and the access track to the west. None of the site is contiguous, physically or visually, with the open land to the north and east. Views of the site are confined to a short section of the access track and from the rear of neighbouring dwellings. Overall, the site is well contained and has a stronger relationship with the surrounding built form rather than the open fields to the north and east, with which there is little, if any, relationship.
15. I accept that, over time, the use of the site as a garden might involve some degree of domestication, possibly including items of furniture or play equipment. However, the site is small in size and is contained within the clear boundaries that I have described. In the particular circumstances of this site therefore, it seems to me that the development would not represent a noticeable encroachment upon the countryside.

16. There is no suggestion of any conflict with any of the other purposes of Green Belts. Based on the evidence before me, I find no reason to conclude otherwise.
17. Consequently, having had regard to all the relevant elements of Green Belt policy set out in paragraph 146 of the Framework, I find that the appeal proposal falls within the types of development that are not inappropriate in the Green Belt. As such, the development complies with the relevant Green Belt policies in the Framework.

Living conditions

18. The raising of the land level has resulted in elevated views over neighbouring rear gardens. However, these neighbouring gardens have high, rear boundary fencing which limits overlooking into these private amenity areas. This is further restricted by the siting of outdoor buildings at the rear of these gardens. The garden of 48 Blackburn Road has a lower rear garden fence, which does enable some overlooking into it from the top tier of the appeal site. However, the points within the site where such overlooking could take place are limited. Overall, I do not find that even when stood on the top tier of the appeal site there would be unacceptable overlooking of neighbouring gardens to the detriment of the privacy enjoyed by their occupants.
19. From this elevated position, a number of windows in the rear elevations of the neighbouring dwellings are clearly visible. However, there is sufficient distance between the windows and the appeal site to ensure that there would not be any harmful overlooking of these windows.
20. I have also had regard to the existing allotment, garages and access road to the rear of the dwellings. As a result of these, there is an existing degree of residential activity that takes place to the rear of the dwellings, which would bring with it some overlooking and subsequent loss of privacy. Given the small size of the appeal site, I do not consider that it would result in an unacceptable intensification of the existing domestic activity in this area.
21. I find therefore that the proposal would not significantly harm the living conditions of the occupants of the neighbouring residential properties, with regard to privacy. As such, I find no conflict with Policy BNE1 of the Chorley Local Plan 2015, which seeks to ensure that development does not cause harm to any neighbouring property by virtue of overlooking.

Conditions

22. The Council have not presented me with any conditions to be imposed in the event that I allow the appeal. However, as the development has already been carried out I do not consider that any are necessary. The appellant has suggested a condition removing permitted development rights. However, as I have found that the site does not form part of the curtilage of the dwelling, it is not necessary to remove permitted development rights pertaining to development within the curtilage of a dwelling.

Conclusion

23. For the reasons given above, having considered all matters raised, the ground (a) appeals are allowed.
24. The ground (a) appeals and the deemed applications succeed. Given the success on the ground (a) appeals there is no need to go on to consider the ground (f) appeals.

Formal Decision

25. The appeals are allowed, the enforcement notices are quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of the Land to domestic garden and a raised platform consisting of two levels at Land to the rear of Nos' 46 and 44 Blackburn Road, Chorley, Lancashire PR6 8LH as shown on the plan attached to the notice.

Alexander Walker

INSPECTOR