



Appeal Decision

Site visit made on 15 March 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2021

Appeal Ref: APP/C3620/C/20/3257930

Land known as Hunters Moon, Burnt Oak Lane, Newdigate, Dorking, Surrey RH5 5BJ

- 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 G Hall against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice, numbered 2020/0080/ENF, was issued on 17 July 2020.
 - The breach of planning control as alleged in the notice is;
 - Without planning permission the erection of entrance gates, piers and brick walling (shown in the position marked blue on the attached plan)
 - Without planning permission the erection of a single storey machinery store including the laying of a solid base (shown in the position mark X on the attached plan).
 - The requirements of the notice are:
 - (1) To remove completely from the land the single Storey machinery store and any associated, bases, fittings, materials and debris.
 - (2) Either
 - a) Remove entirely from the land the entrance gates, piers and brick walling or
 - b) Reduce the height of the entrance gates, piers and brick walling so that it does not exceed one metre in height at any point when measured from natural ground level; and
 - (3) Remove from the land all debris resulting from complying with Step 2
 - The period for compliance with the requirements is 6 months.
 - 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.
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Decision

1. It is directed that the enforcement notice is corrected by the removal of the unnecessary 'the' appearing in the first line of paragraph 5 (2) b) of the notice.
2. Subject to the correction 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.

Procedural matters

3. Since the notice was served an appeal under s78 has been dismissed (APP/C3620/W/20/3252640). Whilst this is a material consideration, the appellant has confirmed that he wishes to pursue the appeal under ground (a) and has paid the requisite fee. The appeal therefore proceeds under grounds (a) and (f).

4. Since the notice was issued, metal shutter doors have been added to the eastern elevation. This minor change was considered by the Inspector in the previous appeal. I agree that these additions are minor in nature and can be accepted without causing injustice to either party. Accordingly, the appeal has been considered on this basis.
5. A minor drafting error has been identified in the first line of paragraph 5 (2) b) of the notice (What you are required to do), with an additional 'the' appearing in the text. I consider that this minor error can be corrected, without causing any injustice to the parties. Accordingly, I shall correct the notice and this is reflected in the above header.

Main Issues

6. I have had regard to the reasons why the Council issued the notice and consider that the main issues are;
 - Whether the proposal is inappropriate development within the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - Effect of the development on openness;
 - Effect of the development on the character and appearance of the area; and
 - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

7. As the site is located in the Green Belt, it is important to establish whether the proposed development would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and development plan policies. The construction of new buildings should be considered to be inappropriate development unless they are included as one of the exceptions as set out in Paragraph 145.
8. In this case it is not in dispute that both elements of the development amount to inappropriate development. This means that the development is, by definition, harmful to the Green Belt and should only be approved in very special circumstances. I have no reason to disagree with that position and find that both elements of the development, amount to inappropriate development in the Green Belt. The development therefore conflicts with Government Guidance set out in the Framework and the objectives of policy CS1 of the Mole Valley Local Development Framework Core Strategy (2009) (CS), which whilst superseded by the Framework has a similar restrictive approach, which seeks to direct new development towards previously developed land.

Effect on openness

9. Para 133 of the Framework identifies that the primary policy 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. It goes on to confirm that inappropriate development is harmful to the Green Belt.

10. The site is located to the north of Burnt Oak Lane which is a narrow rural lane sited outside the village of Newdigate. There are a number of residential properties fronting the road, with a large mobile home park sited immediately to the east. Access to the dwelling is from Burnt Oak Road through the entrance gates that are subject to this appeal. Despite the other residential properties and some agricultural development, the area is predominately rural in character.
11. The single storey machinery store is site to the rear of the dwelling, behind a substantial and well established hedge. It extends along the western boundary of the property. There is a large area of grass to the rear of the building extending towards the tree line to the north.
12. The appellant submits that the building is sited within the residential curtilage of the dwelling. It is important to recognise that the question of curtilage is not a matter of land use, and all the land recognised as being in residential use, may not necessarily be regarded as being part of the curtilage. Caselaw has established that the curtilage of a dwelling, or building, defines an area of land that is intimately associated, and forming a single enclosure with it. Moreover, it is further established that the term curtilage is a matter of fact and degree. There are generally three recognised tests to consider: physical layout; ownership (past and present); and use or function (past and present).
13. At the time of my site visit, the site had the appearance of three separate areas: The dwelling and garden; separated by the hedge from an area of informal hard surfacing with a number of ancillary buildings; and the larger field laid mainly to grass beyond. I acknowledge that that some previous planning applications have been submitted with the red line around the entire site. However, I do not consider that this alone, is determinative of the claimed curtilage. The appellant has provided little evidence to assess the historic ownership of the land, how the building and wider site have been used over the years. Accordingly, the appellant's evidence is not sufficient to demonstrate that, on the balance of probabilities, the building is sited within the curtilage of the dwelling, or that the dwelling's claimed curtilage has otherwise been formally established.
14. For these reasons, I shall determine the appeal on the basis that the building is sited outside the curtilage of the dwelling. It therefore represents a new building in the countryside and Policy RU9 of the LP does not apply, as this relates to garages and domestic outbuildings, within the curtilage of dwellings.
15. The Framework states that the Government attaches great importance to Green Belts, and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It adds that the essential characteristics of Green Belts are their openness and their permanence. Planning Policy Guidance states openness is capable of having both spatial and visual aspects, in other words, the visual impact of the proposal can be relevant, as could its volume.
16. From the evidence, the machinery store is approximately 6m x 12m with an overall height of some 4.5m. A sloping roofed extension, has been added to the northern elevation. This increases the scale of the building, both in physical and

visual terms. It appears as a sizeable additional building to the existing range of outbuildings, on this part of the site. Cumulatively, the gates, piers and walls and the machinery store, all add to the built development on the site. Consequently, there is a resultant loss of openness, which harms the Green Belt. I attach significant weight to that harm.

Character and appearance

17. From my site visit, the building is seen in the context of the other buildings on the site and the surrounding development, including Cudworth Park. Due to the existing hedges the machinery store is largely screened from the highway, with only limited views of the roof from Burnt Oak Lane. The design and finish of the building is similar to the other buildings, albeit not appearing overly large when compared to the dwelling and other buildings.
18. With regard to the front boundary, it was apparent from my site visit that the gates are well set back from the road with the walling and piers, forming a modest bell mouth. The design of the gates allows some views into the site, even when they are closed. I acknowledge that it is not uncommon for gates and fencing, or walls to define the front boundary of residential properties. Indeed, there are a number of similar boundary treatments in the area and the subject development is seen within this context. Consequently, I find that these factors, when taken together, reduce the impact that this part of the development has on the character and appearance of the area.
19. Drawing the above points together, and for the above reasons, I find that the machinery store, gates, piers and walling do not adversely affect the character and appearance of the area. I therefore find no conflict with Policy ENV22 of the Mole Valley Local Plan (2000) (LP), which in summary, seeks to ensure that development is appropriate in scale, form and appearance and respects the character and appearance of the locality.

Other considerations

20. At the time of my site visit the machinery store was being used to store several small diggers and a dumper, together with a quantity of vehicle parts. I acknowledge that the size and nature of the site will require equipment for maintenance, and this may need to be stored when not in use.
21. The appellant submits that should the appeal be dismissed, the other buildings on the site are in poor condition, or already in use and not available for vehicle or machinery storage. However, I have not been provided with evidence to indicate the nature of any machinery, or vehicles that would be required to maintain the site, why other buildings on the site are not, or cannot be made suitable, or that alternative solutions have been explored. I therefore give this only limited weight in favour of this consideration.

Green Belt balance

22. The government attaches great importance to Green Belts. Paragraph 144 of the framework states that substantial weight should be given to any harm to the Green Belt. In this case, whilst in respect of both elements, I have not found harm to the character and appearance of the area, I have nonetheless, found harm to the Green Belt by reason of inappropriateness, and the effect on openness. Balanced against this are the considerations discussed above.

However, even when considered together, these do not clearly outweigh the harm to the Green Belt.

23. The very special circumstances necessary to justify the development therefore do not exist. Consequently, the development conflicts with Policy CS1 of the CS, and the Framework.

Ground (f)

24. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The appellant asserts that in respect of the machinery store, the harm alleged by the Council would still be overcome if the concrete base for the building was allowed to remain.
25. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the notice incorporates two separate breaches. However, in respect of the building, it requires that the building is removed, and specific steps are taken to restore the land. The purpose of the notice is therefore to remedy the breach of planning control.
26. It is well established in case law that the notice can legitimately require the removal of works integral to, and solely for, the purpose of facilitating unauthorised development. I have been provided with no evidence that the concrete base has been provided for any purpose, other than to facilitate the unauthorised building. Moreover, the appellant has not provided any evidence to demonstrate how it would be used, following the required demolition of the building.
27. Overall, on the evidence before me, there is no justification advanced for the retention of the concrete base. I find therefore, that the remedial nature of the notice requires full compliance and the requirements are accordingly not excessive. The appeal on ground (f) therefore fails.

Other matters

28. My attention has also been drawn to the series of events that led to this appeal and the approach the Council have taken, to previous development on this and other sites. Specifically, the appellant has provided photographs and addresses for a number of properties in Burnt Oak Lane and the local area where there are examples of similar front boundary treatments. I was able to view several of these at my site visit. However, I have not been provided with details of the planning history for any of these sites, their relevance to this appeal, or details confirming when the development was carried out. In any event, I have to determine this appeal on its own planning merits, and their presence does not justify allowing this appeal.
29. The appellant has drawn my attention to matters relating to conditions imposed on previous permissions. However, these are matters that are not before me, as they fall outside the scope of this appeal.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR