



Appeal Decisions

Hearing Held on 27 April 2021

Site visit made on 27 April 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal A Ref: APP/B1550/C/20/3256479

Appeal B Ref: APP/B1550/C/20/3256480

Land Adjacent to 246 Little Wakering Road, Little Wakering, Essex SS3 0JN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Anthony Lowther and Appeal B by Mrs Janice Lowther, against an enforcement notice issued by Rochford District Council.
- The enforcement notice numbered 19.00065/BLDG_C, was issued on 9 June 2020.
- The breach of planning control as alleged in the notice is:
 1. The material change of use of land adjacent to 246 Little Wakering Road to use as domestic garden used incidental to the residential premises known as 246 Little Wakering Road.
 2. The erection of two buildings on land referred to at breach 1 above, used for domestic purposes.
- The requirements of the notice are;
 1. Cease the use of the land shown outlined in bold on the attached plan as domestic garden.
 2. Cease the use of the buildings shown hatched and labelled A and B on the attached plan.
 3. Demolish the buildings in the approximate positions hatched and labelled A and B on the attached plan and remove any associated hard standing and foundations.
 4. Remove the swimming pool and any supporting pipe work installed in the building labelled A.
 5. Remove the hard standing shown stippled blue on the attached plan.
 6. Remove the close boarded fence erected on the boundary marked C to D on the attached plan.
 7. Lay suitable topsoil, infill foundation trenches and any other ground openings created from the development and sow grass seed.
 8. Remove all materials and debris arising from the carrying out of all the steps above.
 9. Remove all domestic paraphernalia from the land such as garden furniture.
 10. Maintain a clear defined boundary between the residential curtilage of 246 Little Wakering Road and the site directing a means of enclosure not less than one metre and no greater than two metres in height between points A to B as shown marked by xxx on the attached plan.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) (b) 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for

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

Decisions for Appeal A and Appeal B

1. It is directed that the enforcement notice is corrected by the substitution of the corrected plan submitted at appendix 13 of the Council's statement and attached to this decision. It is further directed that the notice is varied by the deletion of Step 4 at paragraph 5 of the notice which refers to the removal of the swimming pool and any supporting pipework installed in building A; and the deletion of 6 months and the substitution of 12 months as the time for compliance.
2. Subject to the correction and variations, the appeals are dismissed, and the enforcement notice is upheld. In respect of Appeal A, 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. The notice alleges a material change of use and the carrying out of operational development. From the evidence, the appellants purchased the land to use it as garden and to build Building A, to facilitate caring for their granddaughter and to provide Building B for storage. It seems to me that the change of use and the operational development are intrinsically linked, and I shall consider them accordingly.

Ground (b) for both appeals

4. The appeal is proceeding on ground (b), that the matters alleged in the notice have not occurred. This is one of the legal grounds and therefore the onus of proof is on the appellant.
5. It is the knub of the appellants case that some of the matters referred to in the notice have not taken place. Namely, the provision of a swimming pool and associated pipework, and the extent of the fencing shown on the enforcement notice plan is incorrect, as the close boarded fence does not extend as far as point C on the plan.
6. Prior to the Hearing a Statement of Common Ground (SOCG) was agreed by the parties. Step 4 at paragraph 5 of the notice refers to the removal of the swimming pool and any supporting pipework installed in building A. In the SOCG, the Council accepted that there is no swimming pool on site and that this step should be deleted from the notice. The appellants agree that this can be done without causing injustice. I shall correct the notice accordingly.
7. Step 6 of paragraph 5 refers to the removal of close boarded fence on the boundary C to D, as indicated on the enforcement notice plan. The Council agreed that the plan is incorrect as the fence does not extend right along this boundary. Appendix 13 of their statement provides a corrected plan. At the Hearing it was agreed that this plan could be substituted without injustice. I shall therefore correct the notice by the substitution of this amended plan.
8. The above corrections relate to the steps required by the Council to remedy the breach, rather than the allegation as set out in the notice at Paragraph 3. I have no evidence before me, to suggest that on the balance of probability, the

material change of use and the erection of the two buildings, as identified by the enforcement notice, had not been carried out at the time that the notice was issued on 9 June 2020. Accordingly, the appeal on ground (b) fails.

Appeal A Ground (a) and the deemed application

Main Issues

9. The site lies within an area of Green Belt and the main issues are:

- Whether the proposed development would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework), including its effect on the openness of the Green Belt;
- 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 in the Green Belt

10. It is not in dispute that the development amounts to inappropriate development in the Green Belt. I have no reason to disagree with this view. Paragraph 143 of the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt. In accordance with Paragraph 144, I attach substantial weight to that harm.

The effect of the development on openness.

11. 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. 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.
12. The appeal site comprises an area of land adjacent to 246 Little Wakering Road (No.246). The site lies to the rear of properties in Kimberley Road with access down an existing right of way, off Little Wakering Road. It appears as a small parcel of land set in between the residential properties and open countryside.
13. The appeal site is laid mainly to grass which is well maintained and partially bounded by close boarded fencing to the north and west, with an existing hedge and treeline to the east separating it from the open countryside beyond. From my site visit it has the appearance of a residential garden, when compared to the agricultural land to the east. There are two buildings annotated buildings A and B on the enforcement notice plan. Building A is sited along to the eastern boundary, with building B and an area of hard surfacing sited along the southern boundary.

14. At the Hearing the appellant acknowledged that the introduction of any building within the Green Belt will have a degree of harm on openness. In summary it is their case, that the positioning of the land, relative to the housing and countryside, reduces its impact on Green Belt openness to a relatively low level.
15. From the evidence, building A is some 13m by 6.5m. It is single storey with a flat roof that incorporates an overhang to the western elevation. Building B is approximately 7.5m long and 3.7m wide, with a pitched roof. Whilst the hard surfacing cannot be readily seen from outside the site, at my site visit it was clear that the buildings and close boarded fencing are readily visible from the public footpath and to a more limited degree from Kimberley Road.
16. I am satisfied that the limited hard surfacing, being laid flat onto the ground, would not be harmful to the openness of the Green Belt. However, although still relatively modest in size, the buildings and fence have introduced built development into an area where there was none. Accordingly, there is both a spatial effect as a result of their physical existence on the land, and a visual effect that is apparent from within the site and from the public footpath. Moreover, the use of the land as an extended garden would be likely to introduce the residential paraphernalia normally found at residential properties, further increasing the visual presence of the buildings. Consequently, I consider that cumulatively the buildings and fencing result in moderate harm to openness and the purposes of including land in the Green Belt.

Character and appearance

17. The land is separated from the adjacent residential properties by a substantial timber fence with the existing hedge separating it from the open agricultural land beyond. It was suggested at the Hearing, that it may have been historically used as a garden, although this has not been confirmed. To my mind the former undeveloped nature of the appeal site would have made a positive contribution to the open and spacious character of the area.
18. The garden for No 246 approved by 16/00597/FUL is relatively modest in size. From the evidence, the addition of the appeal site to the existing garden would result in an overall increase in the size of the garden by some 55%. I consider that this constitutes a disproportionate increase, when compared to the original garden.
19. Whilst the buildings are similar to other garden buildings in the local area, they have nonetheless, introduced further domestic style buildings onto previously undeveloped land within the countryside. The development has an urbanising effect, further eroding the open character and appearance of this part of the Green Belt. The effect of the external lighting to building A was discussed at the Hearing in terms of the character and appearance of the area. However, the parties agreed that this could be controlled through a suitable worded condition if the appeal was to be allowed.
20. From Little Wakering Road and Kimberley Road, the development is largely screened by buildings and existing hedges. The views that do exist are seen within the context of the other residential properties. However, in contrast, from the public footpath, the design and scale of Building A, emphasised by the large flat roof, is clearly visible when travelling towards Little Wakering Road.

21. For the above reasons, I find that the development causes limited harm to the character and appearance of the area.
22. I do not consider that the suggested sedum roof would overcome the harm I have identified.

Other considerations

23. It is clear from the written and oral evidence given at the Hearing, that the appellant's granddaughter, Shelby, has severe learning difficulties resulting in a requirement for a range of support strategies. She lives with her parents who are both in full time work and attends Glenwood School in Benfleet. It is clear, that the best interests of Shelby are a primary consideration in this appeal.
24. It is the appellant's case that No 246 is not suitable for Shelby. Building A was designed and built specifically to accommodate her personal requirements. It has been finished to a high standard and provides a large wet room, fully fitted kitchen and a lounge area. At the time of my visit there were no sleeping facilities and the appellant had confirmed that Shelby sleeps in the main house if she stays overnight.
25. Mr and Mrs Lowther provide additional care for Shelby, at times when her parents are both working, or if she needs to be collected from school early. The care is mainly required during the day but can also include limited overnight stays. There are no set number of days, and her care is dependent on the availability of her parents, but on average varies between two to four full, or part days a week. Shelby spends most of the time in Building A, as she is calmer in familiar quiet surroundings, with people she knows. In addition, and looking to the future, they are assisting to teach her basic life skills, such as preparing cold drinks and food in the kitchen.
26. At my site visit I was able to view the ground floor of No 246, which is open plan with all of the usual facilities, including a small downstairs cloakroom. I acknowledge that a large wet room, that can readily accommodate two persons, is necessary to provide assistance with Shelby's personal hygiene. In this regard, the cloakroom in the main house would be too small and due to her mobility difficulties, the upstairs bathroom would be impractical.
27. At the Hearing alternative ways to provide suitable accommodation were discussed, including an extension to the main dwelling, or a building within the curtilage of the dwelling. The appellant contends that, to provide an alternative building in the curtilage, would leave little remaining outdoor amenity space. I accept that a building on the scale of Building A would take up a significant portion of the rear garden. However, I have little evidence to demonstrate that most of the facilities could not be provided in the main house, with a smaller building to provide an appropriately sized wet room and any other required amenities. Moreover, at my site visit and visible on the aerial photographs provided by the Council, there are two existing outbuildings immediately adjacent to the northern elevation of the dwelling. I have no evidence to demonstrate why these could not be converted or replaced with a more suitable building for a wet room.
28. Turning to Building B, this appears to be used partly as a workshop with the remainder for domestic storage and I have been provided with little evidence to justify that it should be retained.

29. Drawing the above points together, I share the Council's concerns that Building A is more than is necessary to provide respite care for Shelby, both in terms of its scale and the extensive range of facilities it provides. I have insufficient evidence to justify the scale of the existing building, or that the care could not be provided in the main house or an alternative smaller building, or a combination of the two. Moreover, I am mindful that the building is only used for part of the week, as this is not Shelby's primary residence. Nevertheless, I have considerable sympathy with the circumstances leading to this appeal and fully recognise the valuable contribution that Mr and Mrs Lowther make towards the care and wellbeing of Shelby. For these reasons, I give significant weight to the other considerations referred to above.

Green Belt Balance

30. I have attached significant weight to Shelby's need for respite care with family members. However, these identified considerations need to be weighed against the totality of the harm to the Green Belt. I have found that the development is inappropriate development in the terms set out in the Framework and, in addition, has led to a loss of openness and limited harm to the character and appearance of the area.
31. Consequently, the substantial weight to be given to the Green Belt harm, is not clearly outweighed, either individually or cumulatively, by these other considerations, sufficient to demonstrate the very special circumstances that are necessary to justify the development exist. The development therefore conflicts with policies GB1 and GB2 of the Rochford District Council; Local Development Framework; Core Strategy; Adopted Version (2011) (the CS) and policies DM12 and DM22 of the Rochford District Council; Local Development Framework; Development Management Plan (2014) (the DMP) and the Framework. In summary these policies, seek to ensure that development would not have an undue impact on the openness of the Green Belt or the character of the countryside.
32. S177(1) provides that Planning Permission may be granted 'in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates'. The appellant submitted that planning permission could be granted under ground (a) for the southern part of the site, some 16m from the southern boundary to the north elevation of Building A. This would grant planning permission for a smaller garden extension, including the two buildings. Whilst permission for a reduced sized garden may go some way towards satisfying policy DM22, the retention of the buildings would not overcome the harm to the Green Belt that I have identified above.
33. Accordingly, and having due regard to all of the other matters raised, I find that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (g) for both appeals

34. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 6 months is too short. The appellants have suggested that an alternative timescale of 12 months, to comply with the full requirements of the notice would be more reasonable.

35. The development must be considered in the context of the identified harm to the Green Belt and the time required to undertake the works. Nonetheless, I am mindful of the circumstances that have led to this appeal, the effect that my decision will have on the support and assistance given to Shelby and the ongoing impact of the COVID-19 pandemic.
36. I consider that additional time should be given to allow the appellants to consider and discuss alternatives with the Council and for any applications to be submitted and determined.
37. Accordingly, I consider that a period of 12 months is a more reasonable and proportionate timescale for the requirements of the notice to be carried out. The appeal on ground (g) therefore succeeds.

Other matters

38. I am mindful that in the light of the requirements of the enforcement notice, dismissal of this appeal would mean that the Building A would have to be demolished. This would result in an interference of rights conveyed under Article 8 of the Human Rights Act 1998. However, it would not result in Shelby being homeless, given that her primary care remains with her parents and my conclusion on ground (g) allows additional time to explore an alternative solution for the provision of respite care.
39. Dismissal of the appeal is therefore necessary and proportionate and would not result in a violation of the human rights of the appellants family.
40. I have also considered the effect of the Public Sector Equality Duty which sets out the relevant protected characteristics, including disability. Since there is the potential for my decision to affect persons with a protective characteristic, I have had regard to the three equality principles set out in section 149. Nevertheless, having regard to the legitimate and well established planning policy aims to protect the Green Belt and harm to the character and appearance of the area, in this case I consider that the greater weight attaches to the public interest.

Conclusion

Appeal A

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

42. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

John Dagg	Agent
Mr and Mrs Lowther	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Talent Masuku - BSc (Hons.), MSc.

Katie Ellis

Katie Fowler (observing)

INTERESTED PERSONS:

None

Substitute Notice plan from Appendix 13 of the Council's Statement – (not to scale)

