



Appeal Decision

Site visit made on 8 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2021

Appeal Ref: APP/J1535/C/20/3266170

Land at Tylers Cross Nursery, Tylers Road, Roydon, Essex EN9 2DH

- 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 Spoto against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 20 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission: erection of a gate over 1m high adjacent to a highway.
- The requirements of the notice are 1. Remove the gates and gate posts in the position labelled A – B on the attached plan from the land; 2. Remove all resulting debris from the land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The appeal on ground (a)

Main Issues

1. The main issues are:
 - whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - 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 inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

2. A “building” is defined in s336 of the Act as including any structure or erection. The construction of the gates, including mounting posts, would constitute a building operation.

3. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 134 notes that the Green Belt has five purposes which include to assist in safeguarding the countryside from encroachment. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
4. Paragraph 145 of the Framework establishes that new buildings within the Green Belt are 'inappropriate' unless, amongst other things, it involves the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
5. The Council has provided historic Google Street View imagery, dating from May 2010 and September 2012. These images, which are undisputed by the appellant, indicate that barriers in place at the site entrance prior to the present gate, respectively comprised of a shorter 'five bar' gate and more recently a series of shorter bollards.
6. The gates, which are the subject of this notice, are solid in appearance and painted black. They are significantly taller than the previous barriers. Though set back somewhat from the highway, and despite a linear design, from the information provided I conclude, on the balance of probability, that the feature is materially larger than the one it replaces. The appellant has referred to the gates being incidental to the existing lawful use of the site for horticultural purposes. I have no reason to dispute this and acknowledge that the Framework recognises new agricultural buildings as being not inappropriate in the Green Belt. However, notwithstanding this, I am not persuaded that the gates can be regarded as an agricultural building for the purposes of the Framework. Accordingly I conclude that the gates constitute inappropriate development in the Green Belt.
7. It seems to me that the gates would serve to screen previously available long-range, open views across the site. The gates are flanked on either side by a tall boundary hedge and as such views would primarily have been fleeting glimpses, as the site was passed momentarily. However the development is directly opposite a dwelling and so for residents there, I consider the effect of the change would be more apparent. Drawing these considerations together it seems to me that the development has resulted in some limited harm to the openness of the Green Belt.

Character and Appearance

8. The gate subject to the notice, forms the entrance barrier to an extensive site, with a large horticultural glasshouse located away from the road to the rear. It is unclear whether the horticultural use of the site is ongoing or has ceased. The gate is situated adjacent to, and is accessed from, a busy road, but which in visual terms is characterised by established, dense boundary hedgerows, containing mature trees, which gives the road the appearance of a rural country lane.
9. There are a number of residential properties situated on the opposite side of, and facing the road, and some other commercial sites further along the road to the south west. In terms of the residential properties, front boundaries are

comprised of a combination of fences and hedges; with some of the driveway entrances being open and ungated.

10. Despite being recessed from the immediate boundary of the highway, the development in this case appears as a harsh and dominant industrial feature that is at odds with the more informal character of its surroundings. I did not observe any gates of similar design nearby. Whilst the gates would only be viewed fleetingly by passing motorists and pedestrians, they are highly visible from residential properties situated directly opposite the site.
11. I conclude that the development results in harm to the character and appearance of the area. As such it is in conflict with Policies DBE4 and CP2 of the Epping Forest District Council Combined Local Plan and Local Plan Alterations 2006 (LP) insofar as they seek design to respect the local character of the area and the quality of the rural environment.

Other considerations

12. I have had regard to the appellant's other representations in support of the appeal. The appellant states that it is important to provide secure access to the site and has referred to past incidences of fly tipping and other illegal access there.
13. It seems to me that the security of the site is not specifically dependent on the present gate design and that security could still be achieved with a more acceptable design of barrier and possibly through the use of other measures such as cameras. In this context the occurrence of fly tipping and illegal access on the site would not be inevitable. I therefore attach very limited weight to these considerations.

Green Belt balance

14. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt.
15. With regard to the gates I have found harm to the Green Belt by way of inappropriateness and to its openness. I have also found harm in terms of the character and appearance of the area, which is a consideration of significant weight.
16. I have balanced the harm to the Green Belt and the other harm identified against the other considerations referred to above. However for the reasons given they do not clearly outweigh the harm identified.
17. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently the gates conflict with the Green Belt protection aims of the Framework, Policy GB2A of the LP and Policy DM 4 of the emerging Epping Forest District Local Plan. The ground (a) appeal therefore fails.
18. The Council has also referred to conflict with Policy GB7A of the LP. This policy however refers to the need to avoid 'excessive' adverse impact on the openness, rural character and visual amenity of the Green Belt. I do not consider that the wording of this policy is fully consistent with that of the Framework and accordingly my decision does not rely on it.

The appeal on ground (g)

19. The appeal is that more time is required to comply with the requirements of the notice, in order for an alternative design of barrier to be agreed and the finance raised and contractors identified to secure its implementation.
20. These representations do not seem unreasonable to me. I concur with the view that a month would not be a satisfactory period of time within which to carry out the requirements, given the reasonable aspiration to make alternative provisions. The appellant seeks nine months, however I consider a period of six months would be a reasonable compromise in this case.

Conclusion

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

Formal Decision

22. It is directed that the enforcement notice be varied by deleting the words "One month" in paragraph 6 and inserting the words "Six months" instead.
23. Subject to this variation 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.

Roy Merrett

INSPECTOR