



Appeal Decisions

Site visit made on 8 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2021

Appeal A: APP/J1535/C/20/3259460

Land at Oakleigh House, Hamlet Hill, Royden, Essex CM19 5JZ

- 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 Mustaf Pnishi against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 6 August 2020.
- The breach of planning control as alleged in the notice is Without planning permission the construction of a vehicular access from the highway on to the Land, including the erection of gates and fencing and the laying of hardstanding.
- The requirements of the notice are i) Cease vehicular use of the access shown marked between A and B of the attached plan; ii) Remove from the Land the hardstanding leading from the access referred to in i) above; iii) Remove from the Land the gates and fencing; iv) Reinstall the kerbstones between points marked A and B on the attached plan; v) Reinstall a native hedgerow between points marked A and B on the attached plan; vi) Remove all resultant debris from the Land following compliance with steps i) to v) above.
- 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 succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B: APP/J1535/C/20/3259456

Land at Oakleigh House, Hamlet Hill, Royden, Essex CM19 5JZ

- 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 Mustaf Pnishi against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 6 August 2020.
- The breach of planning control as alleged in the notice is Without planning permission the erection of a retaining wall with gates and piers along the northern and western boundaries of the Land, the wall being over 1 metre in height where adjacent to the highway (between the points marked B and C on the plan attached) and over 2 metres in height between the points marked A and B on the plan attached.
- The requirements of the notice are i) Remove from the Land the gates, walls and piers at and between the points shown between A and B and B and C on the attached plan; ii) Remove all resultant debris from the Land following compliance with step 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) 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.

Appeal C: APP/J1535/C/20/3259457

Land at Oakleigh House, Hamlet Hill, Royden, Essex CM19 5JZ

- 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 Mustaf Pnishi against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 6 August 2020.
- The breach of planning control as alleged in the notice is Without planning permission the erection on the Land of a retaining wall shown in its approximate position between 'A' and 'B' on plan 1 attached and the laying of hardstanding shown cross hatched in its approximate position on plan 2 attached.
- The requirements of the notice are i) Remove from the Land the wall shown between points A and B on plan 1 attached; ii) Remove from the Land the hardstanding shown cross hatched in its approximate position on plan 2 attached; iii) Remove all resultant debris from the Land following compliance with steps i and ii above.
- The period for compliance with the requirements is within two months.
- 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.

Appeal A 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;
- Highway safety issues;
- 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. Paragraph 137 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 138 notes that the Green Belt has five purposes which include to assist safeguarding the countryside from encroachment. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
3. Paragraph 150 states that certain forms of development are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. The types of development referred to

include engineering operations, which would encompass the type of development subject to the notice in this case, namely the formation of a vehicular access.

4. Although the access point from the highway is relatively wide, the laying of hardstanding and provision of the connection to facilitate vehicular access has not resulted in the formation of any built volume. These elements of the access do not therefore result in material harm to openness. Furthermore the hardstanding area is relatively limited in scale and not significantly visible. I do not consider that in itself this results in harm to visual amenity.
5. However, also associated with the formation of the access are the entrance gates and fencing either side of the gates. The gates, relatively tall and constructed in metal mesh, backed with timber boarding comprise a visually harsh entrance feature. On the eastern side of the access, the fencing consists of tall hoarding boards, that are reminiscent of a construction site, and which would be visually incongruous as a permanent feature. This contrasts with the opposite side of the access where the boarding appears to have been replaced by a visually softer form of fencing that has been substantially screened by planting.
6. Nevertheless my considerations need to relate to the development that was in place at the time the notice was issued. It seems to me that the gates and hoardings amount to visually austere and incongruous features, that are prominently sited, being elevated in relation to the adjacent highway, and which would draw the eye to a degree. In the absence of any significant information regarding the characteristics of the boundary prior to the changes being made, I am not persuaded that the fencing and gates, when considered as a whole, would not have resulted in harm to the sense of openness of the Green Belt. Notwithstanding this, in any event I do not consider the fencing and gates to be acceptable in visual amenity terms. Accordingly there would be conflict with Policies DM 3 and DM 9 of the emerging Epping Forest District Local Plan (DLP) insofar as they seek high quality design and to avoid significant harm to landscape character.

Highway Safety

7. The existing and established vehicular access serving the site from Hamlet Hill is shared with the adjoining commercial premises to the north, which are currently vacant. This access is relatively close to the bend in the road, to the south, which causes visibility for emerging drivers to be restricted. Visibility to the north is also significantly hindered by a tall boundary fence associated with the adjoining site.
8. The access, the subject of this notice, is located within the southern boundary of the site, and is somewhat further away from the bend in the road when compared with the existing vehicular access point. The road also slopes upwards away from the bend in the direction of the proposed access. It is apparent from the representations that the appellant is seeking to retain both points of vehicular access in relation to the site.
9. From the representations it is apparent that the County Highway Authority raises no objection to the proposed access, on highway safety grounds, subject to the provision of satisfactory visibility splays and also the closure of the existing access. The Highway Authority, having regard to guidance set out in

the Design Manual for Roads and Bridges and Manual for Streets, advocates visibility splays of some 45.39m to the west and 111m to the east. The appellant, though proposing that a shorter visibility splay to the west would be acceptable (some 40.36metres) to take account of wet weather speeds, has not disputed the basis of the Council's calculation nor raised an objection to the aforementioned more conservatively assessed distance, either in principle or practicality.

10. From the representations received and my visit, there is nothing to persuade me that the visibility splays required by the Council would be excessive or would not be achievable in principle. This is despite the apparent need for some overgrown vegetation to be removed to achieve the requisite visibility to the east, and potential amendments to the embankment and position of boundary features towards the bend in the road, to achieve the requisite splay to the west.
11. It seems to me that the proposed access point, because of the higher standard of visibility available and because the speed of traffic from the west would be slowed by the alignment of the road and to a degree by the uphill gradient, would represent an improvement to highway safety, when compared with the existing situation. However, given that the proposed access could be made satisfactory in highway safety terms, in its own right, I do not concur with the view that its acceptability should be predicated on the closure of the existing access, albeit that this is of an inferior standard.
12. I am also mindful that despite the inferior standard of the existing access, the Highway Authority have not reported the occurrence any serious accidents associated with this. Furthermore, it seems to me that the retention of the proposed access would be likely to result in reduced usage of the inferior access which would therefore amount to a net benefit in highway safety terms.
13. I conclude that the proposed access would comply with Policy ST4 of the Epping Forest District Local Plan and Alterations 2006 (LP) insofar as it seeks that new development avoids harm to highway safety.

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. I have found that the vehicular access connection and hardstanding do not amount to inappropriate development in the Green Belt and are therefore acceptable in this regard. By contrast the associated gates and fencing cause a loss of openness and harm to the purposes of including land in the Green Belt. They are also unacceptable in visual amenity terms.
15. Subject to conditions, the development would not result in harm to highway safety. This 'absence of harm' does not weigh in favour of the appeal.
16. In terms of the gates and fencing, there have been no design considerations cited in support of their retention. The very special circumstances necessary to justify these developments have not therefore been demonstrated. Consequently there is conflict with the Green Belt protection aims of the Framework and with Policy GB2A of the LP and Policy DM 4 of the emerging

DLP. The ground (a) appeal therefore fails in respect of these elements of the development.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission for other parts. The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
18. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the vehicular access connection from the highway on to the Land and the laying of hardstanding, because this benefits from planning permission and is therefore lawful for planning purposes.

Conditions

19. I have considered the imposition of conditions, including those suggested by the parties. Conditions requiring the provision and retention of a suitable visibility splay and preventing the discharge of surface water on the highway are required in the interests of highway safety. As I am only granting planning permission for the vehicular access to the highway and hardstanding as constructed, I do not consider landscaping or boundary treatment conditions are necessary. Nor is a condition required limiting the depth of the hardstanding.

Appeal A on ground (g)

20. The appeal is that more time should be allowed to comply with the requirements of the notice, with a minimum period of some four months being suggested by the appellant. I am mindful that the appeal will be allowed in part and accordingly, the requirements of the notice will be limited to removing the gates, fencing and associated works.
21. A condition will be imposed allowing three months for the provision of the visibility splay and it would seem reasonable to me to allow a six month duration for compliance with the residual requirements of the notice, acknowledging the need to secure a satisfactory replacement boundary treatment. The appeal therefore succeeds to this limited extent.

Appeal B on ground (a)

Main Issues

22. The main issues are:

- whether the development would be inappropriate development in the Green Belt for the purposes of 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.

Green Belt

23. A "building" is defined in s336 of the Act as including any structure or erection. The construction of the wall and gates¹ would therefore constitute a building operation. Paragraph 149 of the Framework establishes that new buildings within the Green Belt are inappropriate unless, amongst other things it would constitute limited infilling or the partial or complete redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development. The appellant seeks to rely on this exception in support of the claim that the wall and gate do not amount to inappropriate development.
24. The appeal site was last used as a residential property and is currently vacant. The Council does not seek to dispute the appellant's claim that the site would have previously developed status or that the alleged breach of planning control would constitute the partial redevelopment of the site. I find no reason to take a contrary view. The Council however states that the wall and gates would have a greater impact on the openness of the Green Belt than the existing development.
25. The boundary wall, subject to this notice, predominantly comprises a uniform design of alternating diagonal bands of red and yellow brick, with taller, regularly spaced piers. The space between piers is currently filled with green hoardings, though I understand the plan is to replace these hoardings with metal railings. Towards the eastern end of the northern boundary, brickwork gives way to a breeze block construction. The western boundary and part of the northern boundary of the site are prominently located in relation to the adjacent main road.
26. From the 'Google Street View' photographs provided by the Council and other descriptions provided by the appellant it is apparent that that the wall replaces a substantial hedge along the western boundary, and some modest timber panel fencing, hedge planting and tall conifer trees along the northern boundary.
27. In combination the wall and gate form a strong and imposing barrier feature, that serves to draw the eye. However, when assessing its impact on openness I have considered the structure in relation to the prominent existing dwelling on the site and structures present on the adjacent site to the north; and also by comparison to the well-established hedge and trees that formed the previous integral boundary treatment to the property. I have also had regard to its setting against rising ground levels to the south and east. In addition, when considering the lack of significant built volume that has been created, on the balance of probability, from the evidence that I have been given, I conclude that the new boundary feature does not have a greater impact on the openness of the Green Belt. It would therefore accord with the Green Belt protection

¹ At the time of my visit this structure took the form of a single sliding gate which I interpret the notice as relating to.

aims of the Framework and with Policy GB2A of the LP and Policy DM 4 of the DLP.

28. The Council has referred to conflict with Policy GB7A of the LP. This policy 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.

Character and Appearance

29. The appeal site is in a rural location of varied but low density development, that is dominated by dense and mature planting adjacent to the main road. Commercial and residential developments give way to open fields to the south and west of the appeal site. The surroundings are characterised by different types of enclosure, including timber panelled fencing and brick boundary walls, but which are generally modest in height and recessive in appearance. Entrance gates are generally set back from the road. Boundaries are interspersed with verdant planting which helps to integrate properties into the informal countryside character.
30. The wall and gate, because of their height and prominent position immediately adjacent to the highway, create an austere and domineering feature. Furthermore the use of vividly contrasting alternate brickwork gives the structure an excessively formalised and urban appearance. Overall the development is at odds with the informal character of its rural surroundings. Whilst the appellant has referred to replacing the hoardings with railings between each of the piers, I am not persuaded that this would be sufficient to mitigate the inappropriate design of the structure. Nor would efforts to screen the structure with hedge planting, which would take time to gain height, be effective in this regard.
31. The breeze block section of wall at the eastern end of the northern boundary is not prominently sited in relation to the main road. It is however highly visible in relation to the adjoining glasshouse site, and for existing and future occupiers of that property would appear as an overbearing and poorly finished feature.
32. I concur with the view that the overall design of the structure seeks to emphasise the individuality of the property rather than fit in with its surroundings. Though I have found that the openness of the Green Belt is not adversely affected, I am in no doubt that the structure results in harm to the character and appearance of the area. Accordingly there is conflict with Policies DBE4, LL2 and CP2 of the LP insofar as they seek that new development respects the character of the surrounding landscape; also with Policies SP 7, DM 3 and DM 9 of the DLP which are concerned with achieving high quality design which has regard to the distinctive character of the area.

Other considerations

33. I have had regard to the appellant's other representations in support of the appeal. The appellant has referred to the need for a tall boundary wall in the interests of security and in order to safeguard the privacy of occupiers, when taking into account the fall in ground levels across the site from east to west.

34. I have taken into consideration the difference in ground levels within and outside the site, and that because of this the lower part of the wall has a retaining function and that the overall height of the structure appears shorter from within the site. Notwithstanding this it seems to me that security and privacy would not be dependent on such a tall structure, and of such poor design considering the context of its surroundings. Furthermore there would be other ways to increase the security of the site, such as through the use of cameras. These considerations therefore attract only limited weight in support of the appeal.

Planning Balance

35. Although I have found that the structure does not result in harm to the Green Belt, the harm caused to the character and appearance of the area weighs significantly against the development.
36. I have balanced this harm against the other considerations referred to above. However for the reasons given they do not outweigh the harm identified. I conclude that the development is in conflict with the development plan when read as a whole.

Appeal B on ground (g)

37. The appellant requests a minimum period of four months to comply with the requirements of the notice and to enable the implementation of a suitable alternative enclosure. It seems to me that when taking into consideration the extensive scale of development that is involved and the potential need to secure permission for an alternative enclosure, a compliance period of six months would not be unreasonable. The appeal therefore succeeds to this extent.

Conclusion

38. For the reasons given above I conclude that the ground (a) 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.

Appeal C on ground (a)

Preliminary Matter

39. It is acknowledged that the plans attached to the notice do not precisely show the position and extent of the alleged retaining wall and hardstanding. However I am satisfied from the representations that the nature and extent of the alleged unauthorised development is understood by the parties without resulting in injustice. Consequently there is no need for the plans to be corrected in this case.

Main Issues

40. The main issues are:
- whether the development would be inappropriate development in the Green Belt for the purposes of 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.

Green Belt

41. The development subject to the notice comprises a terraced area on the eastern side of the site, with concrete capping, finished with a grassed lawn. It is supported by a tall retaining wall. It seems to me that the construction of the wall and hardstanding could be interpreted as a combination of building and engineering operations.
42. As set out previously the Framework establishes that new buildings within the Green Belt are inappropriate unless, amongst other things, it would constitute the partial redevelopment of previously developed land, which would not have a greater impact on the openness of the Green Belt than the existing development. The Framework advises that engineering operations may also be acceptable providing they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
43. From my visit it seems to me that the structure, when taking into account variation in ground levels and the fact that it is set back within the site, would not be significantly visible from the road, even if the height of the boundary enclosure were to be reduced to a degree (bearing in mind the outcome of Appeal B). Whilst the structure would inevitably be visible from within the site, this would be in the context of rising ground levels towards the eastern boundary.
44. The structure is partly retained by the breeze block boundary wall along part of the northern boundary. However I have already concluded above that because of the characteristics of its surroundings, previous boundary treatment and the lack of volume to this element of the development, there would not be net harm to openness from this perspective.
45. I conclude that the retaining wall and hardstanding, both individually and in combination, preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The structure would therefore accord with the Green Belt protection aims of the Framework and with Policy GB2A of the LP and Policy DM 4 of the DLP.

Character and Appearance

46. It is proposed to apply landscaping measures to the retaining wall. In combination with the grassed finish of the hardstanding, the visual impact of this element of the development would be in keeping with its residential setting.
47. However from my visit it appeared that the very tall breeze block wall along the northern boundary of the site, though not specifically referenced by this notice, was nevertheless integral to the stability and form of the structure as a whole. I have already concluded above that the height and appearance of the breeze block wall in relation to the adjacent site to the north would not be acceptable in visual terms.

48. Accordingly, when taking this into account, the development is in conflict with Policies DBE4, LL2 and CP2 of the LP insofar as they seek that new development respects the character of the surrounding landscape; also with Policies SP 7, DM 3 and DM 9 of the DLP which are concerned with achieving high quality design which has regard to the distinctive character of the area.

Planning Balance

49. The structure does not harm the Green Belt. However because of the northern boundary wall it does result in harm to the character and appearance of the area which weighs significantly against the development.
50. The appellant has referred to landscaping measures that would be taken in relation to the development. It seems to me that this would help to mitigate some of the harm, and would inevitably provide some biodiversity benefits, but would not justify the grant of planning permission.
51. The ground (a) appeal therefore fails.

Appeal C of ground (g)

52. The appellant seeks to extend the compliance period for the requirements to a minimum of four months. I have set out above that I consider the problem with the structure to be the section of breeze block wall along the northern boundary.
53. I am persuaded that there would be justification to lengthen the time for compliance with the enforcement notice from two months to six months. I consider that this would provide a reasonable opportunity for the appellant to make a planning application to the Council for an alternative scheme for the retaining wall and hardstanding of reduced scale, when compared to the present structure, and for any necessary amendments to be made, should the application prove successful. In the alternative, I consider it would allow reasonable time for the development to be removed. The ground (g) appeal therefore succeeds to this limited extent.

Conclusion

54. For the reasons given above I conclude that the ground (a) 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 Decisions

Appeal A

55. 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.
56. Subject to this variation the appeal is allowed insofar as it relates to the vehicular access from the highway on to the Land and the laying of hardstanding and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the operational development consisting of the construction of a vehicular access from the highway on to the Land and the laying of hardstanding, on Land at

Oakleigh House, Hamlet Hill, Royden, Essex CM19 5JZ, subject to the conditions set out in the schedule at the end of this decision letter.

57. The appeal is dismissed and the enforcement notice is upheld, as varied, insofar as it relates to the erection of gates and fencing, and planning permission is refused in respect of operational development consisting of the erection of gates and fencing on Land at Oakleigh House, Hamlet Hill, Royden, Essex CM19 5JZ, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

58. It is directed that the enforcement notice be varied by deleting the words "two months" in paragraph 6 of the notice and inserting the words "six months" instead.
59. 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.

Appeal C

60. It is directed that the enforcement notice be varied by deleting the words "two months" in paragraph 6 of the notice and inserting the words "six months" instead.
61. 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

APPEAL A - SCHEDULE OF CONDITIONS

- 1) Within three months of the date of this decision the access at its centre line shall be provided with clear to ground visibility splays with dimensions of 2.4m by 45.39m to the west, and 2.4m by 111m to the east, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be maintained in perpetuity.
- 2) There shall be no discharge of surface water onto the highway.
- 3) Within two months from the date of the decision details of surface water disposal shall be submitted to the local planning authority for approval. The development shall be implemented in accordance with the approved details within two months from the date of the approval and shall be retained for the lifetime of the development.

END OF SCHEDULE OF CONDITIONS