



Appeal Decisions

Hearing Held on 22 June 2021

Site visit made on 23 June 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26th July 2021

Appeal A: APP/R0335/C/20/3245838

Appeal B: APP/R0335/C/20/3245839

Land at Cedar Barn, Winkfield Lane, Winkfield, SL4 4QU

- 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 Mark Hayden-Kellard and Appeal B is made by Linda Hayden-Kellard against an enforcement notice issued by Bracknell Forest Borough Council.
 - The enforcement notice, numbered EN/19/00164/UCOU, was issued on 20 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a self-contained unit of residential accommodation and change of use of land upon which the building stands and its associated curtilage to Class C3.
 - The requirements of the notice are a) Cease the use of the land outlined in red on the enclosed plan as a self-contained residential unit ensuing all tenants have been served with the correct notices and removed from the property; b) Demolish the building shaded green on the enclosed plan and identified in Appendix A to ground level, and remove from the land outlined in red on the attached location plan; c) Remove all materials associated with steps a) and b) from the land; d) Remove all materials associated with the use of the land outlined in red on the attached plan as a private residential garden, such as (but not limited to); garden benches, children's play equipment, domestic structures, gardening equipment and any miscellaneous equipment associated with the residential property, including motor vehicles not in association with the wider agricultural use of Tory Hall Farm.
 - The period for compliance with the requirements is 12 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal A is also proceeding on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the erection of a new dwelling on land at Cedar Barn, Winkfield Lane, Winkfield, SL4 4QU referred to in the notice, subject to the conditions set out in the attached schedule.

The Notice

2. The matters alleged in the notice are the 'erection of a self-contained unit of residential accommodation and change of use of land upon which the building

stands and its associated curtilage to Class C3' and I have taken this to be the erection of a new dwelling which is how it was discussed by both parties during the hearing.

Application for costs

3. At the Hearing an application for costs was made by the Council against the appellants. This application is the subject of a separate Decision.

Appeals A & B - ground (b) and the notice

4. An appeal on this ground is on the basis that the matters stated in the notice, which I have taken to be the erection of a new dwelling, have not occurred. The appellants' case is that the matters as stated in the notice are incorrect as it does not include reference to the demolition of the original barn which took place as part of the same operation as the erection of the replacement building (the self-contained unit of residential accommodation). The Council's view is that the demolition works constituted a separate operation and that it was not expedient to enforce against this element of the works (notwithstanding that the demolition would have required planning permission in its own right) because it did not cause harm to the openness of the Green Belt.
5. Case law provides that the demolition and erection of a replacement building are not necessarily separate breaches of planning control and that it will be a question of fact and degree. In this case there was a point in time (albeit for a short period) when there was not a building on the location as is shown in the photographs submitted in the building control process. By its very nature, the permitted development authorised by the prior approval did not include the demolition of the original barn building. I am therefore satisfied that due to these circumstances, and taking into account the total removal of the original building prior to the provision of the new foundations required for the replacement building, the demolition and erection of the replacement building were separate breaches of planning control.
6. The Council has discretion regarding whether to take enforcement action for a specific breach of planning control and explained that in this instance did not find it expedient to do so in relation to the demolition as it did not consider that harm was caused to the Green Belt as a result. The appeal on this ground does not therefore succeed as the matters stated in the notice have occurred. The allegation as its stands does not need to be corrected or varied to include the demolition and, as a result, neither do the requirements.

Appeals A & B - ground (c)

7. To succeed on this ground the appellants must show that the matters in the notice do not constitute a breach of planning control. The appellants accepted during the hearing that the building which had been removed had been agricultural.
8. However, the appellants had concerns regarding the red line on the plan attached to the notice and the drafting of Requirement (a) on the notice. The red line plan includes the access road which is used not only to access the residential unit but also the wider site. The appellants were concerned that Requirement (a) was drafted to cease all use of the access road. The Council's view was that it would only cease the use of the access road associated with the self-contained unit of residential accommodation. It is correct that the

other lawful uses of the access road, associated with the mixed uses on the rest of the landholding would not be affected by Requirement (a) and the notice does not therefore need to be corrected to alter the area shown in the red line plan.

9. The appellants accept that there had been the erection of the new dwelling without planning permission as alleged on the notice and the appeal on this ground is therefore unsuccessful.

Appeal A - ground (a)

10. An appeal on this ground is that planning permission ought to be granted for the breach of planning control constituted by the matters stated in the notice.

11. The main issues are:

- Whether the works are inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework ('the Framework') and any relevant development plan policies;
- The effect on the openness of the Green Belt;
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposals.

12. The appellants' case is that the development is not inappropriate because it is within the exception in what is now paragraph 149 e) of the Framework, that is limited infilling in villages. A revised version of the Framework was issued on 20 July 2021, but the changes do not affect the matters raised by this appeal. Saved Policy GB1 from Bracknell Forest Borough Local Plan 2002 ('Policy GB1') is broadly in accordance with the Framework regarding Green Belt and whilst it does not include the exception for limited infilling in villages the Council accepts that this would be a material consideration.

13. However, the Council's position in relation to the development is that the exception does not apply because it is not located within the village and was not infilling. The Policies Map, which was produced in 2013 (and which relates to Policy GB1) shows the site of the development outside of the Winkfield/Maiden's Green Belt Village boundary but case law provides that whether development is infill or within a village is a question of fact and planning judgement for the decision-maker¹. From the various maps, plans and aerial photographs submitted during the course of the appeal, and also taking into account my observations made during the site visit, I do not find that the development constitutes limited infilling under the Framework. The dwelling is set back from the surrounding properties, and the perception is of the building edging into the Green Belt. Two sides of the development site directly adjoin the Green Belt and the location of the site, sitting back from Winkfield Lane and in line with the rear of the nearest residential gardens which means that it does not constitute infilling in a village for the purposes of the Framework. The development may be in line with the back of the large adjacent rear garden at The Pytel but it does not sit close to, and is not read in any way in relation to, any of the dwellings located within the village. It is not filling a gap created by the adjacent properties and cannot be considered

¹ Tate v Northumberland County Council [2018] EWCA Civ 1519

infilling, and is therefore not an exception within 149 e) of the Framework and is inappropriate development.

Openness

14. As the development is inappropriate it is necessary to consider its effect on openness, as the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and one of its purposes is to assist in safeguarding the countryside from encroachment. Paragraph 148 of the updated² Framework indicates that substantial weight should be given to any harm to the Green Belt.
15. Openness has a spatial as well as a visual aspect, which is relevant in this case as the development cannot generally be seen from the highway or other publicly accessed areas, and there will only be limited visibility from a few other properties in the area (even in the winter months). In terms of the spatial aspect of the effect on openness, it is relevant that the development replaced an agricultural building of the same shape and size (which was not disputed by the Council). The events which led to the erection of the building and the fact that it appears that there was a fairly limited time during 2016 when there was not a building of a similar size at that location are considered further below.
16. The development's location next to the access road which separates it from the rest of the Green Belt, and its relationship with Tory Hall Farm and the other buildings including the adjacent stables on the edge of the village, mean that its effect on openness and encroachment into the countryside is limited. The residential use of the development, with its associated comings and goings, vehicles for personal use and the external areas for parking and the patio with associated furniture and accoutrements do cause a domestication of the site which has a different effect on the openness when compared to the former agricultural use. Notwithstanding that the development replaced a building of the same size and height, the development does cause some encroachment and a level of harm to the openness of the Green Belt both of which are limited.
17. The harm overall to the Green Belt carries substantial weight. The Council do not argue that the development caused any other planning harm.

Other considerations

18. The appellants' case is that even if the development is found to be inappropriate there are other considerations which weigh in its favour.
19. The appellants argued that it was not their intention that the original building should be demolished, but rather that they intended that it should be converted in accordance with the prior approval granted in 2015. It is argued that the end result, and the impact on the openness of the Green Belt would have been the same had the Class Q permission been implemented. Representations received from interested parties also make this point and their view is that the development blends into its surroundings and is better visually than the building that it replaced. I accept that, whilst the appellants' intention

² A revision of the National Planning Policy Framework was published on 20th July 2021, after the close of the hearing. However, aside from changes to paragraph numbering, the most relevant policies are unchanged, and I consider that none of the changes affect my consideration of these appeals, or the cases of the parties.

- is not relevant, the breach of planning control has arisen due to the demolition of the original building and that the finished building looks extremely similar (including in scale, massing and siting) to the granted prior approval, and afford this significant weight.
20. The appellants also put other considerations in relation to the wider site and its use. They argue that they could erect a similar sized agricultural building under Part 5 of the GDPO (although still needing prior approval which has been sought) and that they have also applied for full planning permission to convert the adjacent stables into two dwellings. I accept that these applications are pending determination but they are not fallback positions as such.
21. Granting permission in this appeal for the development would not prevent the implementation of future development on the site without other measures. The appellants state that they would relinquish any rights to convert the stables for residential use and that this could be achieved by the imposition of a condition. The Council's position is that there is an application pending in relation to such a conversion and that it was therefore difficult for them to respond to the suggestion as it had not yet been determined. I accept that no such rights in relation to the conversion of the stables existed at the time of the hearing and I cannot therefore attach any weight to a hypothetical situation.
22. In addition there is a lawful development certificate (Ref: 13/00853/LDC) for the residential use of the caravan situated immediately adjacent to the development ('the LDC'). The appellants provided a unilateral undertaking the intention of which, it was submitted during the Hearing, was to cease that lawful residential use of the caravan with the subsequent removal of the caravan which would improve visual amenity. The siting of the caravan and use for human habitation which is lawful as evidenced by the LDC is for the use of the land.
23. I am not convinced that the unilateral undertaking does fully secure the appellants' intentions indicated by their advocate, but it would be possible to bolster the obligation by way of a condition to require the removal of the caravan which facilitates the residential use. I am satisfied that such a condition would meet the statutory tests and be in accordance with the appellants' intentions and allows greater weight to be given to this consideration.
24. Securing the removal of the caravan in this way, which would off-set the loss of openness to an extent, and mean that the development would not provide an additional unit of residential accommodation, as it would in effect be swapped for the lawful residential use of the caravan. However, it would provide a much higher quality residential unit, both in terms of its appearance and in the living conditions of the residents, and remove the existing fairly dilapidated looking caravan (although the views of the caravan are extremely limited from outside of the site this is still a relevant consideration in terms of harm to the Green Belt). This is a benefit to which I attach significant weight and the unilateral undertaking meets the statutory tests and is required to prevent the future residential use.
25. In addition, the appellants argue that the development provides a smaller residential unit than many of the properties in the area, and the Council did not disagree. It was clear from the information submitted that many of the houses

in the area are very large and the development does therefore provide a different type of house, albeit still of a high quality and which would not necessarily fall within the definition of affordable. However, I accept that the development only provides one such unit and so overall afford this consideration limited weight.

26. Taking all of the factors into account, I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify a grant of planning permission for the development.

Conditions

27. The conditions provided by the Council have not been contested by the appellants and I have considered them with reference to the Framework and Planning Practice Guidance. As the development has already taken place Conditions 3, 4 and 5 which require details or a scheme to be submitted and agreed by the Council need to be adapted to set a timetable for action and a 'sanction' for non-compliance in order to be enforceable. I have therefore redrafted these conditions to provide such a mechanism and sanction but retained the timescales as included in the original versions suggested by the Council.
28. I am imposing the conditions as set out in the Schedule of Conditions and consider them all necessary to make the development permitted by the deemed application for planning permission acceptable. Conditions 1 and 2 are required to ensure adequate car-parking and accessibility to cyclists in the interests of local character and sustainability and there is a policy basis for their imposition pursuant to Bracknell Forest Borough Local Plan Policy M9 and Core Strategy Policy CS23. Condition 3 is required in the interests of nature conservation and Conditions 4 and 5 are required in the interests of sustainability and the efficient use of resources and are necessary to comply with the development plan, particularly Core Strategy Policies CS10 and CS12. Condition 6 is required to protect the openness of the Green Belt and visual amenity of the area in accordance with Policy GB1 and the Framework.

Overall conclusion

29. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

Zoë Frank

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ben Du Feu	Of Counsel
He called	
Mark Hayden-Kellard	Appellant
Linda Hayden-Kellard	Appellant
Laura Callan	ET Planning
Lyana Powlesland	ET Planning

FOR BRACKNELL FOREST BOROUGH COUNCIL:

Jonathan Welch	Of Counsel
He called	
Richard Cain	Principal Planning Officer BFBC
Duncan Fisher	Senior Planning Officer, BFBC
Rachel Swan	Solicitor

DOCUMENTS

- 1 2013 Policies Map submitted by the Council
- 2 2013 Policies Map submitted by the appellants (same as above)
- 3 Closing submissions on behalf of the appellants

SCHEDULE OF CONDITIONS

- 1) The 2no parking spaces provided for Cedar Barn shall be kept available for parking at all times.
- 2) Unless within 2 months of the date of this decision details for the secure and covered cycle parking spaces, are submitted in writing to the local planning authority for approval, and unless the approved details are implemented within 1 month of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no details in accordance with this condition are approved within 6 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved details specified in this condition, those cycle parking spaces and facilities shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Unless within 2 months of the date of this decision a scheme for the provision of biodiversity enhancements including a plan or drawing showing the location of these enhancements, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within 2 months of the date of this decision a Sustainability Statement covering water efficiency aimed at achieving an average water use in new dwellings of 110 litres/person/day, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved Sustainability Statement specified in this condition, that Sustainability Statement shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Unless within 2 months of the date of this decision an Energy Demand Assessment demonstrating how 10% of the development's energy will be met from on-site renewable energy generation shall, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) The caravan identified in the unilateral undertaking from Linda Hayden-Kellard dated 21 June 2021 relating to this Appeal shall be removed from the site within 3 months of the date of this decision.