



Appeal Decision

Hearing held on 25 March and 23 April 2021

Site visit made on 6 January 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13th September 2021

Appeal A Ref: APP/J1535/C/20/3251175

The Stables, Old Waterworks, Green Lane, Nazeing, Waltham Abbey EN10 6RS

- 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 Karl Canwell against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 17 March 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the conversion of a former stable and the erection of an extension to the stable to facilitate the unauthorised change of use of Land from agricultural to residential use.
- The requirements of the notice are
 - i. Cease the residential use of the Land
 - ii. Remove the former stable and its extension from the Land in the approximate position shown hatched on the attached plan.
 - iii. Following compliance with steps i and ii above, remove all resultant debris from the Land.
- The period for compliance with the requirements is 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)(b)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 falls to be determined.

Appeal B Ref: APP/J1535/W/20/3250749

The Stables, Old Waterworks, Green Lane, Nazeing, Waltham Abbey EN10 6RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Karl Canwell against the decision of Epping Forest District Council.
 - The application Ref EPF/2375/19 dated 14 October 2019 was refused by notice dated 7 January 2020.
 - The development proposed is extension and change of use of a former stables building into a single residential dwelling
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Decisions

Appeal A

1. The enforcement notice is quashed.

Appeal B

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by Karl Canwell against Epping Forest District Council. This application is the subject of a separate Decision.

Procedural Matters

4. The site visit took place when the appropriate procedure was considered to be Written Representations. However, the procedure was subsequently changed to a Hearing. The original hearing on the 25 March was adjourned due to internet difficulties on the part of the Council and the hearing resumed on the 23 April. The parties agreed that a second site visit was unnecessary.
5. Both appeals relate to the residential use of a former stable building which was subsequently extended. I do therefore consider that it is appropriate to deal with both appeals in a single decision letter.
6. The development plan for the Council is currently the Combined Policies Local Plan (1998) and Alterations (2006) (the Local Plan). However, the Council has also sought to rely upon the emerging plan namely the Epping Forest District Local Plan Submission Version (LPSV) 2017 (the Emerging Plan) and I have commented upon the Emerging Plan policies in the Decision.
7. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021. I am satisfied that the revisions have no material difference to the issues raised in this appeal although I have referred to the new paragraph numbers where appropriate.

Appeal A – Matters concerning the Notice

8. A pre – Hearing note was issued to the parties which referred to the case of *Miller Mead v Minister of Housing and Local Government [1963] 1 All ER 459* and the “test” for validity which is “*does the notice tell the person [on whom it is served] fairly what he has done and what he must do to remedy it?*” Whilst there are wide powers for an Inspector to amend or correct a notice, this is subject to any amendments or corrections not giving rise to injustice to either party.
9. The alleged breach is “Without planning permission, the conversion of a former stable and the erection of an extension to facilitate the unauthorised change of use of Land from agricultural to residential use.” Residential use of the stable commenced in 2012 so that the stable was used as a dwelling house from 2012. However, in 2016, the dwelling was enlarged on two sides.
10. The wording used in describing the breach does not convey what actually occurred and lacks clarity. It is not clear whether the words “conversion of a former stable” is intended to refer to operational development or use. The later extension did not facilitate a change of use from agricultural to residential use,

the change of use was from stable use to residential use. Although the breach refers to operational development, namely, the extension facilitating the residential use, there is no reference to the use as a dwelling house which first occurred in 2012.

11. An application for a Certificate of Lawful Use¹ (the CLU) based upon use as a dwelling house was made on the 28 November 2017. The application was withdrawn after the Council indicated that it would be refused. During the hearing, it was apparent that the Council considered the withdrawal of the certificate to be conclusive evidence that the residential use that commenced in 2012 was not lawful. Nevertheless, there has been no formal determination with regard to that matter and there is no dispute between the parties that the use as a dwelling house commenced in 2012.
12. The confusion, with regard to what exactly the Council is alleging, affects when the breach occurred. Clearly, the appellant might have presented a substantially different case had the allegation been correctly identified. The lack of clarity of the alleged breach of control is compounded by the requirements, which include both the demolition of the former stable with the extensions as well as ceasing the residential use. The requirements need to flow from the breach and the current wording does not do that as the allegation refers only to the extensions in terms of operational development.
13. The Council did suggest some alternative wording for the breach when the hearing resumed on the 23 April. The wording suggested was "retrospective conversion of a former stable involving extensions to form a residential dwelling with associated parking and refuse storage." However, whilst the alternative wording now refers to a dwelling, it would give rise to injustice to the appellant for the same reasons as the original wording. The wording still does not address whether it was the change of use of the stable or the addition of extensions which resulted in the breach of planning control. The reasons for the notice do not assist in clarifying any of the issues with the wording such as when the Council considered that a material change of use occurred and what operational development the notice is attacking. The issue of the requirements not flowing from the breach remains the same.
14. Neither the original wording nor the alternative wording are clear as to what the Council considers the breach of planning control to be, which in turn impacts when the breach occurred which is particularly relevant for immunity periods. The breach appears to be either the material change of use that occurred in 2102 when the residential use occurred or the Council is alleging that the breach occurred when the extensions were added and those two allegations are different and clearly give rise to different potential grounds of appeal by the appellant.

Conclusion on Appeal A

15. For the reasons given above, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the errors in accordance with section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. The notice is invalid and will be quashed. Consequently, the appeal on ground (a)(b)(f) and (g) do not need to be considered.

¹ EPF/3034/17

Appeal B - the Section 78 appeal

16. The Council originally refused the planning application on two grounds, namely the suitability of the appeal site for residential development and the absence of mitigation to address any adverse impact arising from air pollution having regard to the Epping Forest Special Area of Conservation. The absence of an adopted mitigation strategy meant that the appellant could not overcome that reason for refusal.
17. However, on the 7 January 2021, the Council adopted the Interim Air Pollution Mitigation Strategy which allows the submission of mitigation measures including a unilateral undertaking. As a unilateral undertaking has now been completed and submitted, the Council agreed at the hearing that the reason for refusal was no longer a main issue although it still remains to be addressed.
18. The appeal site is within the Green Belt. The Council's enforcement notice did include Green Belt reasons for issuing the notice but the planning refusal did not include a Green Belt reason for refusal. Nevertheless, I do have to consider whether or not the development is inappropriate development within the Green Belt. The planning application description refers to "extension and change of use."

Main Issues

19. The main issues are therefore

- i) Whether the development is inappropriate development within the Green Belt for the purposes of the Framework and development plan policy and the effect of the development on the openness and purposes of the Green Belt
- ii) Whether the development is a suitable location for residential use.
- iii) if the development is inappropriate, whether this and any identified harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

20. The appeal property is located within a former waterworks site (the Old Waterworks) which includes a number of buildings with a mix of uses including commercial uses. There are stables and a paddock to the one side of the appeal property and storage and office buildings to the other side. The appeal property is timber framed and single storey with open plan living space, 2 bedrooms and a bathroom. There is no garden space as such as the rear of the building is on the boundary of the appellant's ownership. There are other similar style buildings at the Old Waterworks including two residential units which have the benefit of Lawful Development Certificates.

Inappropriateness

21. The appeal site is currently within the Green Belt. Paragraph 137 (previously Paragraph 133) of the Framework states that the Government attaches great importance to Green Belt land. Paragraph 147 (previously Paragraph 143) states that inappropriate development is, by definition, harmful to the Green Belt. Paragraph 150 (previously Paragraph 146) lists certain types of development that are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land

- within it. Paragraph 150 d) includes the re-use of buildings provided that the buildings are of permanent and substantial construction.
22. At the hearing it was agreed that Policy GB9A of the Local Plan is not relevant, but policies GB2A and GB8A of the Local Plan are the relevant policies. Policy GB2A includes the change of use or extension of existing buildings and (iv) refers to "other uses which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in the Green Belt," which mirrors the openness consideration of Paragraph 150. Policy GB8A of the Local Plan also refers to changes of use of buildings but is more restrictive than Paragraph 150 with a requirement to meet five criteria which are not consistent with the Framework.
23. Whilst the appellant is of the view that the Old Waterworks site would be taken out of the Green Belt designation when the Emerging Plan is adopted, the appellant also refers to uncertainty with the Emerging Plan given the amount of work to be done with regard to the 39 action points which are to be addressed as part of the local plan process. Nevertheless, the current position is that the appeal site is within the Green Belt.
24. Policies GB2A of the Local Plan and Policy DM4 of the Emerging Plan are consistent with Paragraph 150 of the Framework and the development would therefore need to satisfy the openness test. In accordance with Paragraph 48 of the Framework, the degree of consistency to the Framework is a factor which can result in weight being attributed to the policy even though there are currently unresolved objections to the Emerging Plan although the precise details of the objections are not before me. I therefore do attach moderate weight to Policy DM4 in view of the consistency with the Framework.
25. The Council's reason for refusal of the planning application does not refer to Green Belt harm. In contrast, the Council's delegated report for the enforcement notice refers to the change of use introducing residential paraphernalia that comes along with a residential use. The development is modest and has no formal garden area. Irrespective of size, any residential use brings with it a certain amount of comings and goings and any grant of planning permission would run with the land and not be limited to the current occupiers. Any space to the front of the dwellings is likely to have domestic paraphernalia such as tables and chairs and children's play equipment. The presence of the appeal dwelling with comings and goings and domestic paraphernalia does impact upon the openness of the appeal site.
26. It is not disputed that the dwelling includes extensions which consisted of the enlargement of the original stable building to two sides in 2016 by around 2.5 metres to the side nearest to the stables and around 1.5 metres across the front. It is the case that the enlargement of the original building with physical development does impact upon the openness of the Green Belt. In view of the location of the appeal site, which is towards the middle of the Old Waterworks, the impact upon openness is spatial rather than visual but nevertheless there is an adverse impact upon openness both as a result of domestic paraphernalia and the physical enlargement of the original stables.
27. Therefore, the development is inappropriate development as described in Paragraph 150 of the Framework and Policy GB2A of the Local Plan and Policy DM4 of the Emerging Plan.

Suitable site for residential development

28. With regard to the suitability of the site for residential use, the Council relies upon its spatial strategy for residential sites and states that the residential use is out of context in an area designated as an Employment site. However, the Old Waterworks site is not a Designated Employment site in the existing Local Plan. It may be the case that The Old Waterworks is likely to become a designated Employment Site when the new plan is adopted. However, the site is not currently designated as such and, even if that is the case, it is unclear how any future designation would operate given the mix of current uses.
29. Policy ST1 (iii) of the Local Plan refers to housing being located in places that encourage walking, cycling and the use of public transport and that housing will be principally located in existing urban areas and make the best of land which is or could be highly accessible to public transport or close to services. The thrust of the policy is to ensure that residential development is located in areas with the best accessibility to services and to encourage non-car travel. The appellant considered that the location could be considered to be urban edge. The Council stated the location was not quite on the edge but not as remote as some locations. Nevertheless, the appeal site is not located within the urban area and there is no evidence before me to indicate that the site is highly accessible by use of public transport and services.
30. With regard to the current use of the Old Waterworks, the appellant refers to the existence of two other dwellings as an indication that residential use is appropriate. However, both of those dwellings result from Certificates of Lawful Use and are therefore not there as a result of any assessment of the suitability of the location in terms of the development plan. As well as the other dwellings, the wider site includes stabling and a paddock to the one side of the appeal dwelling as well as business and industrial uses. There is a Certificate of Lawful Use for open air commercial storage (Class B8), for a large part of the rear of the Old Waterworks site which includes the only access into the wider site from the main road. Although modest, adding a third dwelling to the existing lawful uses outside of an urban area is not in keeping with a spatial strategy, the thrust of which is to avoid piecemeal development by locating residential use in urban areas with appropriate facilities and services.
31. Since these appeals were lodged, the Council granted planning permission for a change of use of the appeal building to B1 office/light industrial use on the 30 June 2020 (the planning permission). The appellant indicated at the hearing that the application was made in view of the confusion over the wording of the enforcement notice and concern that the Council appeared to be seeking the demolition of the whole building including the original stable. The appellant considers that the additional dwelling is more appropriate than a new commercial use in light of the existing dwellings on site. However, I do not agree. Whether or not the planning permission is implemented or viable is a matter for the appellant but the approved use does appear to be more in keeping with the predominantly business and industrial setting of the wider site.
32. For the reasons given, whilst I agree that the appeal site is not within an area designated as an Employment Site, I do nevertheless find that the appeal site is not a suitable location for residential use.

33. It is therefore contrary to Policies ST1 and CP1 of the Local Plan which seek collectively to ensure that development encourages walking, cycling and access to public transport and is located in principally urban areas. Although the Council has referred to Policy CP2 I find it to be less relevant as the Council has not indicated which part of the policy it seeks to rely upon.

Other Considerations

34. The dwelling would contribute towards the local housing supply. The Council has provide information with regard to the Council's housing supply in respect of work done to support the adoption of the Emerging Plan. Nevertheless, the Council does not dispute that it is unable to show a 5 year housing supply at the present time with a figure of below 3 years. The dwelling would make a contribution towards the local housing supply, but the benefits arising from one single storey dwelling with 2 modest bedrooms would be very modest. I attach limited weight to the contribution to the housing supply.
35. The appeal scheme would enable the appellant's daughter and two children to continue living where they have lived since 2013. I attach moderate weight to this consideration.
36. The presumption in favour of development referred to in paragraph 11 (d) of the Framework does not apply as the application of the Green Belt policies in the Framework provide a clear reason for refusing the development in accordance with the Footnote.

Green Belt Balance

37. 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 and that very special circumstances will not exist unless any harm to the Green Belt by reason of inappropriateness and any other harm It is clearly outweighed by other considerations. The development is inappropriate development and is therefore harmful by definition. Any harm caused to the Green Belt must be given substantial weight. I have also found that the appeal site is not a suitable location for residential use and conflicts with the development plan policies as set out above.
38. Balanced against that are the other considerations namely the modest contribution towards the housing supply and the appellants family's circumstances. However, even when considered together, these do not clearly outweigh the totality of harm to the Green Belt and the location of the development. The very special circumstances necessary to justify the development therefore do not exist.

Overall Conclusion on Appeal B

39. I have found that the appeal dwelling is not in a suitable location for residential use. I have also found that the development is inappropriate development. The development does not accord with the development plan as a whole and there are no material considerations to outweigh that finding. Therefore, for the reasons given, Appeal B is dismissed.

E. Griffin

INSPECTOR

APPEARANCES

THE APPELLANT

Karl Canwell

FOR THE APPELLANT:

Rachel Bryan
Director

Sworders

FOR THE LOCAL PLANNING AUTHORITY:

Caroline Brown
Enforcement Officer

Epping Forest District Council

Documents submitted after the hearing:

- 1.Suggested additional conditions
2. Information re the SAC
3. Duplicate of application form and plan
- 3.Submission Version of Emerging Policy Plan P10
- 4.Employment Plans
- 5.Plan 2.5 Green Belt Boundary Alterations showing proposed Green Belt release of land.
- 6.Map showing extract from the Local Plan