
Appeal Decisions

Site visit made on 12 January 2021

by **N Thomas MA MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 1 November 2021

Appeal A Ref: APP/H1515/C/20/3257372

Appeal B Ref: APP/H1515/C/20/3257373

Land adjacent to Oakwood, Little Hyde Lane, Ingatestone, Essex CM4 0HJ

- The appeal is 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 Alan Austin and Appeal B is made by Mrs Janice Austin against an enforcement notice issued by Brentwood Borough Council.
 - The enforcement notice, numbered 17/00102/UNLCOU, was issued on 15 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the land, shown edged with red on the attached plan, from agricultural land to use as a residential/domestic garden ancillary to a residential dwellinghouse known as Oakwood, Little Hyde Lane i.e. as an extension of the existing residential/domestic curtilage.
 - The requirements of the notice are:
 1. Permanently cease the use of the land for the unauthorised use, as stated above.
 - The period for compliance with the requirements is three 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 1990 Act.
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - Deleting the words 'i.e as an extension of the existing residential/domestic curtilage' from the allegation.
2. Subject to the correction, Appeal A is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
3. Subject to the same correction, Appeal B is dismissed and the enforcement notice is upheld.

Preliminary Matters

4. The appeal relates to an irregular shaped area of land adjacent to the dwelling and gardens at Oakwood. The appellants state that the land was purchased in 2010, while a pond was enlarged on the land in 2019 following the grant of planning permission¹.

¹ Ref 19/01017/FUL

5. The land is separated from the adjacent agricultural field by a laurel hedge. Part of the boundary between the appeal site and the garden of Oakwood is marked with a fence and hedge, but in the area around the pond and the garage there is no physical boundary between the appeal site and the garden.
6. Since the appeal was lodged, the revised National Planning Policy Framework (NPPF) was published in July 2021. The parties have been given the opportunity to comment on its implications for the case and any responses have been taken into consideration.

Matters concerning the notice

7. I have a duty to try to get the notice in order. While the first part of the alleged breach of planning control refers to a material change of use, the second part specifies that the material change of use is an extension of the existing residential/domestic curtilage. However, the term 'curtilage' does not refer to a use of land or the extent of a planning unit and it is incorrect to include it in the allegation. I am satisfied that the substance of the allegation is clear and has been understood by the appellants. I can correct the notice to delete the reference to the extension to the residential curtilage without causing injustice.

Appeals on ground (b)

8. To succeed on this ground, the appellants would have to demonstrate, on the balance of probabilities, that the matters that led to the service of the notice have not occurred, as a matter of fact.
9. The appellants' case is that the land is physically separated from the dwelling by existing vegetation and has not been used residentially as part of the enjoyment of the main house. It is laid to grass and is managed occasionally. It contains no buildings or flower beds. It could be maintained as a meadow and fall within the definition of agriculture.
10. The Council refers to aerial photographs dated 2000 and 2009/10 showing the land was previously agricultural and undeveloped. A representation from Ingatestone and Fryerning Parish Council states that prior to purchase by the appellants, the land was part of the field which still remains on two of its boundaries. The appellants have not provided any evidence to the contrary.
11. The site is physically separated from the adjacent farmland. Despite the appellants' assertion to the contrary, the boundary with the garden of Oakwood is open in places, so the site is not separated from the garden, but is easily accessible from it. The site is a large, grassed area that has been maintained as such by mowing. Although it does not contain any flower beds or buildings, that does not mean that it was not being used by the occupiers of Oakwood for purposes associated with their residential use of the dwelling. The appellants have not put forward any evidence to demonstrate that an agricultural use has been taking place. That it could be managed as a meadow in the future does not have any bearing on this ground of appeal.
12. I conclude from the evidence before me and my observations on site that, on the balance of probabilities, the site has been used as a residential/domestic garden ancillary to the residential use of Oakwood. It is more likely than not that the matters that led to the service of the notice have occurred. The appellants' evidence falls short of discharging the burden of proof and the appeals on ground (b) fail.

Appeal A on ground (a) and the deemed planning application

13. The ground of appeal is that planning permission ought to be granted in respect of the breach of planning control constituted by the matters alleged in the notice. The site is within the Green Belt. Policies GB1, GB2 and GB8 of the Brentwood Replacement Local Plan Adopted 2005 (BRLP) set out the approach to development in the Green Belt and were 'saved' by a Direction of the Secretary of State on 23 July 2008.
14. The NPPF sets out the Government's policy in relation to Green Belts and is a material consideration. As the 'saved' policies were adopted some time before this version of the NPPF was published, it is necessary to consider the degree to which they are consistent with it.
15. The NPPF states that inappropriate development is, by definition, harmful and should not be approved other than in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
16. BRLP Policy GB1 states that planning permission for the change of use of land for purposes other than those appropriate to a Green Belt, will only be permitted in very special circumstances. BRLP Policy GB2 sets out criteria to be considered for development in the Green Belt, including that they do not conflict with the purposes of including land in the Green Belt or its openness. It also sets out additional detailed considerations relating to the impact on public rights of way, landscape features and the location of new buildings. Taken together these policies are broadly consistent with the NPPF and do not conflict with it.
17. BRLP Policy GB8 states that extensions of a domestic curtilage into the Green Belt will not be allowed. Notwithstanding my concern with the use of the word 'curtilage' in this context, the policy is more restrictive than the NPPF in relation to material changes of use. Paragraph 150e) sets out that such development is not inappropriate in the Green Belt, provided it preserves its openness and does not conflict with the purposes of including land within it. As a result, I give BRLP Policy GB8 limited weight in this appeal.
18. Having regard to the reasons for issuing the notice, the main issues are as follows:
 - Whether the development is inappropriate development in the Green Belt;
 - The effect on the character and appearance of the site and surrounding area;
 - If the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development

19. The NPPF identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and states that their essential characteristics are their openness and their permanence (paragraph 137). 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 purpose of including land within it. This includes material changes in the use of the land in paragraph 150 e).
20. The appeal site was part of a larger open agricultural field, that was free from any development and had an open appearance. As a result of its physical separation from the rest of the field by a substantial evergreen hedge and fence, it appears as part of the extended garden of Oakwood and has a more domestic appearance. This has reduced the openness of the land both spatially and visually. There were no items associated with a residential use on the land at the time of my visit and I note that the appellant's intention to retain the land undeveloped and free from domestic paraphernalia. However, it would be difficult to prevent items such as garden furniture from being brought onto the land in the future, which would further reduce its openness.
21. The five purposes served by Green Belts are set out in paragraph 138 of the NPPF. The development appears as an encroachment of a residential use into the open countryside and therefore conflicts with the related purpose set out in paragraph 138 c).
22. I conclude that the development is inappropriate development in the Green Belt. As the development represents an encroachment into the countryside that affects the openness of the site, I find that it is moderately harmful to the Green Belt.

Character and appearance

23. The appeal site is within the open countryside, and forms part of a ribbon of loose-knit development along one side of Little Hyde Lane, surrounded by open fields. I saw at my site visit that Little Hyde Lane is well used by walkers, runners and cyclists, and connects with the settlement of Ingatestone to the south. Despite the proximity of the village and the A12, the area has a distinctive rural character.
24. The previously open, undeveloped and agricultural appearance of the appeal site would have made a positive contribution to the rural character of the area. The change of use and associated boundary treatments have resulted in the land having a more domestic appearance. Glimpsed views towards the appeal site are possible from the lane through the boundary vegetation, from where the site appears as part of a domestic garden. This detracts from the open and undeveloped appearance of the land and reduces its positive contribution to the character of the area.
25. I acknowledge that there are no flower beds or buildings on the site. The appellant suggests that this could be controlled through a planning condition if I were minded to allow the appeal. I have also considered whether a condition could prevent domestic equipment such as garden furniture from being brought onto the land. However, any such conditions would need to be reasonable, and while it could be justifiable to restrict the erection of new buildings on the land,

I consider that it would be unduly restrictive to prevent the planting of flowers and the use of domestic paraphernalia, which in any event would not overcome the harm to the character and appearance of the site caused by the change of use. It is therefore not clear to me that the use could be effectively controlled through planning conditions to overcome the harm.

26. I therefore conclude that the development is harmful to the character and appearance of the site and surrounding area. It is thus in conflict with BRLP Policies CP1 and GB2 insofar as they require that development does not have an unacceptable impact on visual amenity, existing landscape features or the character and appearance of the area.

Other considerations

27. The Parish Council raises concerns with regard to flooding and the effect of works carried out to a ditch between the garden to Oakwood and the appeal site. The appellant states that flooding has been alleviated by works carried out to the ditch, along with environmental benefits in providing natural habitat for local wildlife. However, these are matters associated with the pond and other works to the site, rather than the alleged breach of planning control which relates to the use of the land. They therefore weigh neither for nor against the development.

Green Belt balance

28. The change of use is inappropriate development in the Green Belt and the NPPF establishes that substantial weight should be given to any harm to the Green Belt. I have found that the use is moderately harmful through the effect on openness and the conflict with Green Belt purposes, and it is harmful to the character and appearance of the area. There are no considerations put forward that could clearly outweigh the Green Belt harm. The very special circumstances necessary to justify the development do not, therefore, exist. It is therefore in conflict with the NPPF and BRLP Policies GB1, GB2 and GB8 in relation to Green Belt.

Conclusion in relation to Ground (a)

29. For the reasons given above and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed application should be refused.

The ground (g) appeals

30. The ground of appeal is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed. The period for compliance is 3 months, and the appellants seek 6 months. No reason has been given. As the requirement is to cease the use, it seems to me that 3 months strikes a reasonable balance between the interests of the appellants and the need to bring the breach of planning control to a timely resolution. The appeals on ground (g) therefore fail.

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

N Thomas

INSPECTOR