
Appeal Decisions

Site visit made on 6 December 2021

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal A: APP/C3620/C/21/3274752

Appeal B: APP/C3620/C/21/3274753

Berry Farm, Blanks Lane, Newdigate, Surrey, RH5 5ED

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeals are made by Mr Paul Cameron (Appeal A) and Treehouse Life Limited (Paul Cameron) (Appeal B) against an enforcement notice issued by the Mole Valley District Council.
- The enforcement notice was issued on 14 April 2021.
- The breach of planning control alleged in the notice is without planning permission, the erection of timber decking and posts on that part of the land shown edged green ("the site").
- The requirements of the enforcement notice are:
 - 1) To remove completely from the site the timber decking and posts.
 - 2) To restore the site to its former condition before the breach took place.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B proceeds on ground (f) only.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld as set out below in the Formal Decision.

Appeal site and background

1. All measurements referred to hereafter are approximate.
2. The appeal site is approximately 10m x 20m in area and is one of a number of plots of land formed from an earlier subdivision of a larger field.
3. The site lies within the countryside and within the Metropolitan Green Belt on the south side of Blanks Lane. The appellant has built a timber deck structure ("the structure") upon which he intends to commercially cultivate blueberries for sale.

Ground (a)/deemed application for planning permission

4. Having regard to the Council's reasons for issuing the enforcement notice¹ the main issues are:
 - (a) whether the structure is inappropriate development within the Green Belt; and
 - (b) the effect of the structure on the character and appearance of the area.

¹ Reasons for issuing the notice - Section 4 of the enforcement notice.

Reasons

Whether inappropriate development within the Green Belt

5. The appeal development is a timber deck structure measuring 12.2m x 9.15m (112m²). Due to the sloping land level it is 0.2m in height at its northern edge and 0.5m high at its southern edge. It is supported by a timber sub-structure which rests upon the ground together with upright posts at its corners which are sunk into the ground and secured with a proprietary ready-mixed concrete.
6. No appeal on ground (c) has been made. However, given its degree of attachment and permanence on the ground resulting primarily from its overall size and weight, together with concreted fixings into the ground, it clearly constitutes a 'structure' and also a 'building' as defined in s336 of the Act. Even without ground fixings its attachment to the ground by itself, through sheer bulk and weight, together with its intended long term presence on the site for the purposes described by the appellant, it would still constitute a 'building' and hence requires planning permission.
7. The Council have concerns as to the true purpose of the structure and that it is not "reasonably required" for agriculture. However, the appellant is clear in stating that it is required for agricultural purposes. I must therefore determine this ground of appeal and the deemed application for planning permission on the basis of what has been applied for in the appellant's submissions.
8. Paragraph 149(a) of the Framework² sets out that the construction of new buildings for agriculture are exceptions to being inappropriate development in the Green Belt. Whether or not a building is such an exception within paragraph 149(a) is not limited by any criteria relating to size or to any other matters. Hence, while "reasonably required" may be relevant in the context of other policies and/or circumstances, it is not a relevant test for the purposes of paragraph 149(a).
9. Consequently, since the structure is required for agriculture I conclude that it falls to be considered as an exception within paragraph 149(a) and hence it is not inappropriate development. As such, the effect of the structure on the openness of the Green Belt does not need to be considered.

Character and appearance of the area

10. The appellant's written submissions³ sets out a justification of how and why he has chosen to utilise the structure for cultivating wild blueberries for commercial sale. In summary, up to 100 blueberry bushes would be planted within containers and maintained on the raised deck area. This, it is said, would allow working space around the bushes when tending to the crop and walking to be unhindered by ground conditions.
11. However, I have concerns about the appellant's submitted justification. It is not confirmed to be an assessment by a person with appropriate agricultural experience and/or relevant qualifications, and hence it lacks credibility. While it sets out his professional experience of building ground-based structures, there is no evidence of him having any prior fruit-growing or other agricultural

² National Planning Policy Framework (2019)

³ Appellant's Full Planning Statement/agricultural justification/agricultural use

experience or qualifications. In this regard, for example, some of the financial projections are questionable. They do not appear to fully take account of all related costs, and the £8,335p.a sales figure relates to supermarket retail prices which would be higher than the price he would be paid. Also, rather than being detailed and specific to the planned enterprise, some of the justification content appears to be, or based upon, generally available open-source information. Moreover, there is no evidence before me of this raised decking design being used elsewhere, or why designs of alternative less visible structures, or other solutions, were discounted as being unsuitable.

12. Consequently, while I have no doubt that blueberries could in any event be raised and cultivated on the deck structure as described by the appellant, I am not satisfied that the design of the appeal structure, particularly in terms of its overall bulk and height, is reasonably required. As such, there is conflict with saved Policy RUD14 of the Mole Valley Local Plan (2000) (LP).
13. Contrary to the appellant's view, I consider that the deck structure is not of typical agricultural appearance. It is also substantial in size in its own right, and occupies over 50% of the appeal site. Being elevated above ground level its design is prominent and conspicuous and appears highly incongruous in the context of the prevailing character and appearance of the surrounding countryside, including from the nearby public footpath. As such, it results in significant harm to the open character and appearance of the rural area in conflict with LP Policies RUD14 and ENV22, and Policy CS13 of the Core Strategy (2009).
14. Although the cultivation of blueberries in containers on the deck would soften its appearance to some degree, it would not adequately mitigate the harm I have identified.
15. The appellant points to enhancement of biodiversity. However, no detailed analysis of any net gain in biodiversity is before me. Although reference is made to a preliminary ecological appraisal one has not been submitted. Given that over half of the land within the site would continue to be covered by a wooden structure I am not convinced there would be any significant net gains, or, if there were net gains that they would outweigh the harm to the character and appearance of the area I have described.
16. Reference is made to paragraph 84 of the Framework⁴ and to other local development plan policies which promote sustainable growth and development of land-based rural businesses. However, paragraph 84 also requires well-designed new buildings which I have found not to be the case here.

Conclusion on ground (a)

17. To conclude; the considerations raised in support of allowing the appeal are not sufficient, either individually or cumulatively, to clearly outweigh the harm to the character and appearance of the area I have identified. As such, the development is not sustainable overall and conflicts with the Council's planning policies, as I have set out earlier, and with the Development Plan as a whole.
18. For all these reasons, the appeal on ground (a) fails.

⁴ National Planning Policy Framework (2019)

Appeal on ground (f)

19. For an appeal under ground (f) to succeed it is important to understand the purpose of the notice requirements. Those are either; *to remedy the breach of planning control* (s173(4)(a) of the Act), or, *to remedy any harm to amenity resulting from the breach*, s173(4)(b). In this regard the notice requires the removal of the building and the return of the land to its former condition, prior to the breach taking place. It is clear therefore that the purpose of the notice is *to remedy the breach of planning control*.
20. It is clear therefore that the requirement to remove the building and restore the land to its former condition cannot be excessive requirements; because they go no further than remedying the breach. Any lesser requirements than those specified in the notice would not fully remedy the breach.
21. The appeal on ground (f) fails.

FORMAL DECISION

APPEALS A and B

22. The appeals are 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 Act.

Thomas Shields

INSPECTOR