



Appeal Decisions

Site visit made on 22 February 2022

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal A Ref: APP/G3110/C/21/3284403

Appeal B Ref: APP/G3110/C/21/3284404

226 Godstow Road, Wolvercote, Oxford OX2 8PH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Steven P Robinson (Appeal A) and Mrs Theadora C J Robinson (Appeal B) against an enforcement notice issued by Oxford City Council.
 - The notice, numbered 21/00090/ENF, was issued on 8 September 2021.
 - The breach of planning control as alleged in the notice is: *Without planning permission: (1) the material change of use of the Land from agricultural use (a sui generis use) to residential garden land to form an extension of the garden of No 226 Godstow Road; and (2) the erection of a building on the Land.*
 - The requirements of the notice are to: (i) Cease the use of the Land as residential garden land; (ii) Demolish or dismantle the building on the Land referred to in paragraph 3(2) of this notice; and (iii) Remove all materials and rubble arising from step (ii) from the Land.
 - The periods for compliance with the requirements are: (i) 3 months (ii) 2 months (iii) 3 months
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(b) of the 1990 Act. Since the prescribed fees have not 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 1990 Act have lapsed.
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Decision

1. The appeals are 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.

Appeals A and B – ground (b)

2. An appeal on ground (b) is a legal ground of appeal and is a claim that the matters alleged at Section 3 of the notice have not occurred as a matter of fact. It concerns the circumstances leading up to, and at the time of the issuing of the notice. The onus is on the appellants and the test of the evidence is on the balance of probability.
3. The appellants must therefore demonstrate that there has not been a material change of use of the land and operational development on the land by way of the erection of the building has not occurred. The planning merits of the matters alleged do not fall to be considered under an appeal on this ground.

4. The appeal relates to an area of land to the rear and side of a residential property on the edge of Wolvercote. The appeal site comprises 712sqm of land located about 8m from the rear elevation of No. 226 Godstow Road (No. 226) and part of the gravelled driveway to the side of the house. The site was formerly part of a larger wildflower meadow to the side and rear of the site and has been enclosed with post and rail fencing. A modest sized detached building has been erected on the land, close to the rear boundary.
5. The council has brought to my attention two applications for planning permission which have been recently refused: 21/01319/FUL – change of use of field in agricultural use to residential garden land to form an extension of the residential curtilage of No. 226 Godstow Road and retention of ancillary outbuilding; and 21/02895/FUL – Erection of single storey agricultural building.
6. The appellants' case is that a material change of use of the land has not occurred because it remains in an agricultural use. Furthermore, the building which has been erected on the land is being used for agricultural purposes in association with the use of the land.
7. Agriculture encompasses horticulture and the full definition is given at s336 of the 1990 Act: *"'agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly"*. Although horticulture is not separately defined, it is generally considered to be the cultivation of an orchard or nursery, flowers, fruits, vegetables and ornamental plants.
8. The appeal site is enclosed with post and rail fencing which separates it on two sides from the remaining agricultural land. There is no physical separation from the remainder of the appellants' land which is limited to a large, gravelled driveway, part of which is caught by the notice, and a sitting out area to the rear of the house. At the time of my visit, the grass within the appeal site was long and unkempt, similar to many lawned areas at this time of year. There were areas of ornamental planting, newly planted saplings and other young trees, beehives and a green-painted timber clad building under a plain clay tile roof. Aspects of the appellants' use of the land, bee keeping and fruit growing, can be agricultural or domestic, but in this case the scale and nature of the uses on land enclosed with, and in such close proximity to, the dwellinghouse, are of a domestic character, as is the appearance and character of the land itself.
9. The L-shaped building, which has been erected on the land, has a domestic appearance with full length glazed bi-fold doors in one elevation, a pergola with climbers growing up the vertical stands and an area of decorative tiled flooring beneath the pergola. Internally, the building was divided into two sections. One housed garden maintenance equipment, such as a ride-on mower and strimmer. The other section contained plants, propagating equipment and raised beds. The floor to this section was covered with the same decorative tiles, the walls had skirting boards, electrical wall sockets and embellished

lighting hung from the ceiling. The building clearly has not been designed with an agricultural use in mind.

10. Overall, as a matter of fact and degree I am in no doubt that the land is in domestic use and is not being used for agriculture within the meaning of the Act. The matters alleged on the notice had occurred and therefore the appeals on ground (b) must fail.

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

Main Issues

11. These are:

- whether the development is inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt;
- whether the development preserves or enhances the character or appearance of the Wolvercote and Godstow Conservation Area (CA);
- the effect of the development on flood risk on or off the land;
- the effect of the development on the living conditions of occupiers of neighbouring properties; and
- if the development would be inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposals.

Whether the proposal is inappropriate development in the Green Belt;

12. Policy G3 of the Oxford Local Plan 2036 (LP) states that, in accordance with national policy, permission will not be granted for inappropriate development within the Green Belt. This is echoed by Policy GBS2 of the Wolvercote Neighbourhood Plan 2019-2034 (WNP).
13. Substantial weight is given to any harm to the Green Belt. The National Planning Policy Framework (the Framework) advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and openness and permanence are stated as being the essential characteristics of Green Belts¹. Green Belts serve 5 purposes, one of which is to assist in safeguarding the countryside from encroachment². The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances³ which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
14. Paragraph 149 sets out that the construction of new buildings in the Green Belt should be regarded as inappropriate but identifies a list of building types that may be considered to be exceptions. Following on from my reasoning on the

¹ Paragraph 137

² Paragraph 138

³ Paragraph 147

appeal under ground (b), the building does not fall into any of the exceptions listed and is, by definition, inappropriate development.

15. Certain other forms of development are then identified which are not inappropriate, provided that they preserve the Green Belt's openness and do not conflict with the purposes of including land within it. In this latter category, under paragraph 150 (e), one of the forms of development which may not be inappropriate is a material change in the use of land.
16. The material change of use of part of the field represents a noticeable encroachment into the countryside and with a change in the use of the land to residential, domestic use and associated paraphernalia reduces openness. As a consequence, the material change of use is inappropriate development which is harmful to the Green Belt, contrary to the provisions of the Framework and Policy G3 of the LP. Policy GBS1 of the WNP refers to Publicly Accessible Green Space. The appeal site is defined as 'green infrastructure' in annex 4 of the WNP but is not publicly accessible. In this respect, the policy is not relevant.

The effect on the openness of the Green Belt

17. I have already concluded that the material change of use of the land fails to preserve the openness of the Green Belt. However, it is also necessary to consider the effect of the building on openness of the Green Belt.
18. Openness has a visual aspect as well as a spatial dimension. Although the building is modest in terms of its overall footprint, height and scale, the development has a spatial dimension, introducing a new permanent building into an area of once open field where there was previously no development. The building is not particularly prominent from public vantage points, but the absence of significant visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt. The structure inevitably reduces openness, albeit to a moderate degree, and that loss of openness must be given substantial weight in line with paragraph 148 of the Framework.

Whether the development preserves or enhances the character or appearance of the CA

19. Wolvercote and Godstow Conservation Area Appraisal, June 2007 (the Appraisal) describes the predominant impression of the CA as one of greenery, a rural idyll. With an historical past and the well-preserved open, undeveloped rural character of the area, the area is famed for its vast expanses of open meadowland that have not been ploughed or subjected to modern farming practices.
20. The council is concerned that the development compromises the green edge to the built environment and damages an important rural fringe that contributes to the setting of, and harms the significance of the CA.
21. The appeal site is to the rear of a small cluster of residential properties. It shares its side boundary to the northeast with a similar sized grassed area, enclosed by low level wooden fencing. Beyond this group of houses is a stream which separates it from the main body of the village. Surrounding the appeal site to the rear and southwest are fields with mature tree and hedge lined boundaries. There is a wide access to the side of No.226 which allows for views towards the land at the rear of the property. The low post and rail fencing surrounding the appeal site allows for extended views across the field beyond.

The building, which is positioned in the furthest corner, is of a simple, albeit domesticated appearance and a modest size and is a feature which is not uncommon in the gardens of rural properties.

22. While there are limited views from the public realm, there will be vantage points from the rear of neighbouring properties. In these circumstances, the garden area would be viewed across existing gardens with a backdrop of pastoral land and mature tree boundaries further afield. In my opinion, the development does not harm the character or appearance of the CA. As such it is not necessary for me to consider the guidance provided by Paragraph 201 of the Framework in relation to the balance of harm to a heritage asset against public benefits.
23. For the collective reasons outlined above, I conclude that the material change of use of the land and the erection of the building do not conflict with the aims of Policies DH1 and DH3 of the LP, which require great weight to be given to the setting of the CA and for development to be of high quality that creates or enhances local distinctiveness.

Flood risk

24. The council's statement provides that the site falls within Flood Zone 2. In accordance with Policy RE3 of the LP and the Framework, a Flood Risk Assessment (FRA) has been submitted by the appellant.
25. The building amounts to minor development in relation to flood risk being an outbuilding of low intrinsic value. The FRA concludes that the building and the use of part of the field even for residential purposes, is likely to cause negligible displacement of water or increase flood risk. In this respect the development complies with the requirements of Policy RE3 and RE4 of the LP and Policy BES4 of the WNP, which seek to ensure that new development does not materially affect the risk of flooding.

Living conditions

26. The use of the building and the land in association with the dwellinghouse is characteristic of most living arrangements where the main outdoor space is to the rear of the property. Furthermore, it seems that this arrangement would be likely to generate less disturbance for the occupiers of the neighbouring property than the previous arrangement of the outdoor space. In this regard, the development does not conflict with Policy H14 of the LP which seeks to ensure, amongst other things, reasonable privacy for occupants of existing homes.

Other considerations

27. The land presently does present a small public benefit through the planting of additional trees and keeping of bees. These benefits attract some weight in favour of the appeal.

Green Belt balance

28. I have found that the development constitutes inappropriate development in the Green Belt and that it harms its openness to a moderate degree. As such, the development compromises the objective of the Framework to keep Green Belt land permanently open. While I have not identified any material harm to

the character or appearance of the CA or the effect of the development on the occupiers of the neighbouring property, these are neutral factors which do not weigh for or against the proposal in the overall balance.

29. Notwithstanding my conclusions, in accordance with the Framework, substantial weight is attached to any harm to the Green Belt. Furthermore, the Framework advises that very special circumstances will not exist unless harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. The arguments before me in support of the proposals do not clearly outweigh the Green Belt harm. Consequently, the very special circumstances necessary to justify the proposal do not exist. Therefore, the proposed development conflicts with the Green Belt protection aims of Policy G3 of the LP and the Framework.
30. The development does not accord with the development plan read as a whole. In the absence of material considerations to indicate otherwise, planning permission must therefore be refused. Accordingly, I dismiss the appeal on ground (a) and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

S A Hanson

INSPECTOR