
Appeal Decisions

Site visit made on 4 March 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Appeal A Ref : APP/Y3615/C/21/3274914

Appeal B Ref : APP/Y3615/C/21/3274915

Land at Holmdale, Holmbury St Mary, Dorking, Surrey RH5 6AR

- 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 Mr W Littlewood and Appeal B is made by Mrs S Littlewood against an enforcement notice issued by Guildford Borough Council.
- The notice was issued on 13 April 2021.
- The breach of planning control as alleged in the notice is without planning permission (i) the construction of a building on the Land in the approximate position marked with an 'X' on the plan attached to the Notice ('Building X'); (ii) the use of the building and the land hatched in black for mixed use as a chicken hut, art studio and for domestic storage; (iii) installation of a hard surface on the Land hatched in black on the plan attached to the Notice.
- The requirements of the notice are (i) cease the use of Building X as a chicken shed, art studio and for domestic storage; (ii) cease the use of the Land hatched in black for purposes ancillary to the unauthorised use of Building X; (iii) disconnect all services to and demolish and permanently remove from the Land the Building X, together with solar panels, wood burning stove, kitchen, shower, toilet, sink, fridge, light fixtures and power outlets, windows installed in Building X to facilitate the unauthorised use; (iv) dig up and permanently remove from the Land hatched black the hard surface laid on the Land; (v) permanently remove from the Land hatched black the fencing, septic tank and water butt and all domestic and other paraphernalia brought onto the Land to facilitate the unauthorised use; (vi) following compliance with steps (i) to (v) above, permanently remove all resultant debris, waste, rubbish and materials from the Land; (vii) reseed the land on which Building X was constructed and the land hatched black with grass.
- The period for compliance with the requirements in relation to uses (i) and (ii) is 1 month and in relation to other steps (iii) – (vii) is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(f)) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

1. Since the issue of the Enforcement Notice and submission of initial statements by the parties the National Planning Policy Framework (the Framework) has been amended. The Planning Inspectorate wrote to the parties seeking any additional representations as a result of the changes to the Framework. None was received. I shall consider the latest Framework in

determining these appeals.

2. The Notice refers to certain items and facilities that were not present at the time of my site visit, including a toilet and shower. There is no dispute that these were present at the time of issue of the Notice and have subsequently been removed. I shall consider the development as at the time of issue of the Notice.
3. The representations before me refer to an application for variation of a condition attached to planning permission 16/P/02012 (the Permission) to reflect that more of the building is being used as storage rather than to house chickens and to provide a gardener's toilet. The Council has confirmed that since the issue of the Notice the application has been refused as not being a minor material amendment.

Appeal A

Ground (a) appeal and deemed application

Main Issues

4. Under this ground of appeal planning permission is sought for the development enforced against.
5. The main issues in the determination of this ground of appeal are :
 - Whether or not the development amounts to inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - Its effect on the openness of the Green Belt;
 - The effect of the development on the setting of Holmdale, a Grade 1 Listed Building; and
 - If the scheme is inappropriate development whether the harm caused by reason of inappropriateness, and any other harm, is clearly outweighed by other circumstances so as to amount to the very special circumstances necessary to justify it.

Green Belt

Inappropriateness

6. Great importance is attached to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework sets out the purposes of Green Belt and measures for their protection. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, 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.
7. The Framework provides at paragraph 149 that construction of new buildings should be regarded as inappropriate within the Green Belt unless it falls within listed exceptions. One of the exceptions is 'the replacement of a

building, provided the new building is in the same use and not materially larger than the one it replaces’.

8. The development plan (including the Guildford Borough Local Plan : Strategy and Sites (the LPSS) 2015 – 2034 and saved policies in the Local Plan 2003) mirrors the Framework. Policy P2 of the LPSS states that ‘ certain forms of development are not considered to be inappropriate. Proposals will be permitted where they are consistent with the exceptions listed in national planning policy’.
9. The site is situated in a semi-rural location south of the village of Holmbury St Mary. The appeal site comprises the residential dwellinghouse and Grade 1 Listed Building known as Holmdale which is set in extensive grounds and within the Green Belt. The requirements of the Notice concern a building which sits some distance from Holmdale (defined as Building X in the Notice) and its immediate surroundings. Holmdale sits within Holmbury St Mary Conservation Area but Building X does not.
10. Planning permission (reference 16/P/0212 ‘the Permission’) has been granted for the construction of a chicken shed following demolition of an existing chicken shed on the site where Building X stands. The application for the Permission refers to a dilapidated structure previously in use as a chicken shed/store. The building constructed and the subject of these appeals (Building X) is materially different from the approved plans the subject of the Permission. For example it has large windows and a shower room. It follows that Building X is new development and not implementation of the Permission. Building X replaces the former dilapidated chicken shed.
11. To satisfy the paragraph 149 exception Building X must be in the same use and not materially larger than the dilapidated chicken shed it replaces.
12. There is no definition of ‘materially larger.’ In granting the Permission the Council accepted that the approved plans showed a building that was not materially larger than the dilapidated chicken shed. I agree. The footprint and volume of Building X is not materially different than the building approved by the Permission. As a matter of fact and degree I conclude that Building X is not materially larger than the building it replaces.
13. Turning to whether Building X is ‘in the same use as the building it replaces’. These words should be given their natural meaning. The original building was in use as a chicken shed. The use attacked by the Notice is a mixed use as a chicken hut, art studio and domestic storage. Whilst there is some use by chickens a significant area is not used as a chicken shed. It has been fitted out with sanitary fittings, including a shower room and toilet. The character of the building as a whole is substantially different to that of a chicken shed. As a matter of fact and degree I find that Building X is not in the same use as the one it replaces.
14. The Appellant argues that the mixed use is not development as it continues to be incidental to the enjoyment of the lawful residential use and benefits from permitted development rights or falls within section 55 (2) (d) of the 1990 Act . But such benefits are dependent upon Building X being within the curtilage of Holmdale.

15. 'Curtilage' is not a term of land use nor does it necessarily equate to the planning unit. 'Curtilage' is not defined in planning legislation but has been the subject of caselaw, including the various cases referred to me by both parties. Relevant criteria reaffirmed in *Burford*¹ include the physical layout of the building and structure, ownership, past and present and use or function, past and present. Essentially, the curtilage of a building is confined to an area around a building, having an intimate association with that building, serving the purpose of the building in some necessary or useful way and usually (though not necessarily) forming one enclosure with the building. It is a question of fact and degree.
16. Building X is some considerable distance from Holmdale (approximately 300m). It is accessed by a path that leads from Holmdale. Holmdale and Building X are separated by intervening belts of trees and a rolling landscape. Distance and topography mean that Building X is not visible from Holmdale. The area around Building X has the appearance of parkland and has a markedly different character compared with the garden area next to and on the same level as the house. Its association with the garden of the country house is not evident. I recognise that the appeal site is within single ownership and that the uses of Building X are capable of being incidental to the dwellinghouse. None of these factors is determinative. On balance, taking all relevant factors into account including the physical division and difference in setting the site of Building X is distinct and does not as a matter of fact and degree have the sort of intimate association with the house that is required for it to be part of the house's curtilage.
17. In conclusion I find that Building X is not in the same use as the building it replaces. It therefore follows that it cannot fall within the paragraph 149 exception. For the reasons given above I conclude that the development does not satisfy the exceptions in the Framework. It therefore constitutes inappropriate development which is by definition harmful to the Green Belt and to which substantial weight should be given.

Openness

18. A fundamental aim of Green Belt policy is to keep land permanently open. The openness of the Green Belt is evident from the surrounding area.
19. The Appellant draws attention to the Permission and says that there is no difference between the approved plans and the development carried out in terms of openness. I disagree. Its use spills out into the surrounding area including paraphernalia such as a water butt and an area for seating. It has a physical expression in the form of a gravel hardstanding. This might have a function in preventing damage by chickens but it has a material impact on the loss of openness. The absence of significant visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt. Openness is a more holistic concept than visual impact. The development has a spatial impact on openness arising from its physical presence.
20. When considered as a whole, the spatial impact of the development means that it would fail to preserve the openness of the Green Belt. It creates a loss of openness albeit to no major degree in itself but certainly to a material

¹ *Burford v SSCLG* [2017] JPL 1300

degree. This adds to the harm resulting from being inappropriate development in the Green Belt.

Other considerations

21. The Framework says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm by reason of inappropriateness is clearly outweighed by other considerations.
22. The appeal site sits within the Surrey Hills Area of Outstanding Natural Beauty (the AONB) and an Area of Great Landscape Value (AGLV).
23. The primary purpose of the AONB designation is to conserve and enhance the natural beauty of the area. The Framework provides that great weight should be given to conserving landscape and scenic beauty in an AONB. Policy P1 requires new development to conserve and enhance the special landscape qualities of the AONB, restrict major development and enhance natural beauty.
24. The area is characterised by wooded hills and low lying meadowland. Holmdale enjoys a secluded location. It has a sweeping entrance and sits within extensive grounds. Building X and the surrounding hard surfaced area is well separated from Holmdale. The intervening area between Holmdale and Building X includes evergreen planting. The distance, topography and planting mean that it is not possible to see Building X from Holmdale and vice versa and it is not visible from the wider area beyond the site. The design of Building X is traditional in appearance.
25. I conclude that the development does not give rise to unacceptable impact on the character and appearance of the area or fail to conserve the landscape and scenic beauty of the AONB.

The effect of the development on the setting of Holmdale, a Grade 1 Listed Building

26. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural interest which it possesses. In addition the Framework requires that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Policies in the development plan (including policy D3 of the LPSS) are consistent with the Framework.
27. Holmdale is a large country house with decorative timber framing. Its substantial grounds provide a spatial quality to its setting. Its sweeping entrance and rolling landscaped grounds play a significant role in its setting.
28. There is no dispute that the development causes no harm to the Grade 2 listed coach house or the wider conservation area and on this point I agree.
29. Building X and its surrounding area is relatively modest in size not materially larger than the previously approved Permission. This, combined with its

separation by some 320m from Holmdale maintain a sense of spaciousness around the listed building.

30. The Council argues that the development carried out represents a substantial permanent structure and that it causes moderate harm to the Grade 1 Listed Building. I disagree.
31. I have considered the difference between the previously approved scheme (the Permission) and the development carried out. It is not materially larger and changes in its design (including solar panels and windows) do not affect its sense of permanence to any material degree. Building X is located a considerable distance from Holmdale and tree planting and topography frame views. I noted at my site visit that Building X cannot be seen in views from Holmdale and vice versa.
32. Given the scale and siting of the development I am satisfied that it has a neutral impact on the significance of heritage assets. Accordingly, it meets the requirements of section 66, the Framework and relevant development plan policies in terms of impact on the setting of Holmdale.

Planning balance and conclusions

33. The development amounts to inappropriate development in the Green Belt. I have given the harm associated with this substantial weight. There is also some harm through the effect of the development on openness. The absence of harm to the character and appearance of the area and the setting of Holmdale as a heritage asset does not undermine the identified harm.
34. I have considered the arguments in favour of the benefits of the development, including creating a quiet area for art and storage but there is no clear evidence that the Appellants could not undertake these activities without the development carried out. The matters raised by the Appellants in support of the development do not clearly outweigh the totality of harm that I have identified to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist and the development is contrary to the Framework and relevant policies in the development plan.
35. I have considered whether conditions could overcome the harm. I have taken into account the Planning Practice Guidance. No conditions are proposed by the Council. I do not consider that conditions would overcome the identified harm. The Appellant's suggestion of a condition preventing use for accommodation purposes is not necessary as the identified harm does not concern such a use.
36. I have taken into account that the purpose of enforcement is remedial and not punitive and the arguments before me under the ground (f) appeals. I have considered whether planning permission should be granted for part of the development that has been carried out. The deemed planning application before me in this ground of appeal includes the power to grant planning permission 'in relation to the whole or any part' of the matters alleged in the notice. I have considered whether the scheme the subject of the Permission could be reasonably considered as part of the development carried out and would overcome the planning harm identified. But I find the

differences between the approved plans the subject of the Permission and the development carried out to be significant and incompatible. I find the Permission to be an alternative scheme not part of the development carried out. The Appellant also refers to a number of alternative schemes including removal of toilet, work bench and cessation as art studio. But there are no detailed plans before me for a lesser scheme and I cannot conclude with any certainty that there is an obvious alternative that would alleviate the identified harm. Accordingly, whilst I have considered the possibility I attach the prospect of issuing a conditional or split planning permission for part of the development very limited weight.

37. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission in whole or part on the deemed application.

Appeals A and B

Ground (f) appeals

38. This ground of appeal is whether having regard to the purpose for which the Notice was issued the steps exceed what is necessary to meet that purpose.

39. There are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control that has occurred. The second is to remedy any injury to amenity which has been caused by the breach.

40. The notice requires removal of Building X. Its purpose is therefore to remedy the breach of planning control. Nothing short of demolition would satisfy the purpose of the Notice.

41. The Appellants claim that the requirement to demolish Building X is excessive. They draw attention to the Permission and to options that they consider more appropriate than demolition. I have considered whether there is an alternative option that would remedy the injury to amenity at less cost and disruption than demolition. But as explained above I do not consider that there is an obvious alternative that could be regarded as 'part' of the development the subject of the notice for the purposes of the ground (a) appeal. It is not my role in this appeal to design an alternative scheme that would remedy the identified harm. The correct route for determining any alternative scheme is a planning application.

42. I therefore conclude for the reasons stated above that the appeals should not succeed.

Formal Decisions

Appeal A Ref : APP/Y3615/C/21/3274914

Appeal B Ref : APP/Y3615/C/21/3274915

43. The appeals are dismissed and 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.

S. Prail

Inspector