
Appeal Decision

Site visit made on 30 June 2022

by Diane Lewis BA(Hons) MCD MA LL M RTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Appeal Ref: APP/G5180/C/20/3255009

Land adjacent to Knockholt Railway Station, North Side, Sevenoaks Road, Halstead, Bromley TN14 7HR

- 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 Mr E O'Driscoll against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice, numbered 18/00651, was issued on 1 June 2020.
- The breach of planning control as alleged in the notice is Without planning permission, on the Land, shown in detail on the attached plan,
 - a) Installation of brick walls, incorporating brick piers and metal gates at the entrance to the Land, between the points marked "A" and "B" on the attached plan, and
 - b) Erection of a stable block in approximately the position marked "C" on the attached plan and measuring 12.8 metres in length, 3.6 metres in width, with a dual pitched roof extending to a height of 3.3 metres.
- The requirements of the notice are:
 - 1) Remove the newly constructed metal gates, brick piers and brick walls described in paragraph 3, and restore the boundary to its original condition.
 - 2) Remove the stable block described in paragraph 3.
 - 3) Remove all materials resulting from 1) and 2) and leave the land in a tidy condition.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Enforcement Notice

1. The Land, as shown on the plan attached to the notice, is a narrow 'finger' of land located directly to the north of Knockholt Station. The defined area, about 1.1 hectares, is sited at the top of an embankment well above the level of the railway and is within the Metropolitan Green Belt.
2. In December 2017 planning permission was granted on appeal for the material change of use of this area of land to use as a caravan site for occupation by gypsy travellers, with a septic tank, hard standing, re-profiling of land and

boundary fence¹. The permission was limited to three years. The Council on 18 October 2021 granted permission for the use to continue for a further three year period. A planning condition restricted occupation of the site to gypsies and travellers as defined in Annex 1: Glossary of the Planning Policy for Traveller Sites 2015. The permission was not personal to the applicants.

3. Walls and gates. In response to the appellant's representations, the Council requested that a revised plan be attached to the notice to more accurately show point B. The appellant agreed this correction would resolve the concern. The site visit confirmed the brick walls are not as extensive as marked on the original plan and basically enclose the vehicle entrance serving the site. I am satisfied that no injustice will be caused if I correct the enforcement notice in this respect, which will also clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.
4. Stable block. The notice is directed specifically at the erection of the building involving operational development, not a material change in the use of the land. The notice plan identifies the approximate position of the stable block within the Land. In my view that is an acceptable approach, bearing in mind the description of the development authorised by the planning permission granted in 2017 and 2021. To correct the notice to allege a mixed use, as indicated by the appellant, would broaden the scope of the notice, have wider implications and cause injustice.

Reasons

Appeal on ground (a)/deemed planning application

5. I will consider the planning merits of the walls and gates at the site entrance separately from the planning merits of the stable block, as the main parties have done.
6. In the development plan Policy 49 of the Bromley Local Plan (the Local Plan) controls development in the Green Belt. This policy is generally consistent with Green Belt policy in the National Planning Policy Framework, including paragraphs 147 to 150.
7. Within this policy context the main issue in each case is whether the development is inappropriate development and if so whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to provide the very special circumstances necessary to justify the development.

Walls, piers and gates

8. The access to the site is off a track that also is a marked public footpath. At the site entrance the walls enclose the driveway into the site through the double gates. Brick piers mark each end of the sections of wall. The brick wall is over 2 metres (m) high and the piers are slightly higher. A reddish brick is the main material, incorporating decorative detail and stone capping, which results in a visually strong statement. The double gates are of metalwork with a small amount of ornamentation.

¹ Appeal decision ref APP/G5180/W/17/3177124 dated 4 December 2017

9. The erection of the walls, piers and gates falls within the category of the construction of a new building for the purposes of applying Green Belt policy. Applying Policy 49 and paragraph 149 of the Framework the construction is inappropriate development.
10. The site does not front onto Sevenoaks Road but is set well back beyond the roadside development and station, where the land has a more rural feel. The walled and gated entrance is out of keeping and visually intrusive within the rural surroundings and countryside character by reason of its height, solidity and use of materials.
11. The appellant acknowledges that the walls and piers are rather prominent and urbanising for the location and accepts no very special circumstances exist to justify their retention. That fair concession is consistent with my conclusion and following the direction of Policy 49, permission should not be granted.
12. However, there is provision within section 177(1) of the 1990 Act to grant permission for any part of the matters constituting the breach of planning control. Therefore it is open to me to consider a proposal from the appellant, whereby permission is sought for the double gates with supporting brick piers. The appellant indicates that these remaining piers could be reduced in height to no more than 2m. The wall and the other two piers would be removed.
13. The walls and end piers make up most of the solid construction. In contrast the wrought iron gates are lightweight in appearance and the open pattern of the metalwork allows for views through to the land behind. They have no appreciable effect on openness. Supporting brick piers would add an element of built form but if restricted to two metres in height their visual presence would be suitably mitigated. This height could be secured by planning condition. The gateway is set back from the public footpath and with the changes proposed would not harm the rural scene.
14. The site could reasonably be expected to have a gated entrance to define the premises and provide an element of security. The gateway would reinforce the security provided by the CCTV camera that has been erected just behind the wall. The proposed feature would be compatible with the caravan site and, in respect of openness, an improvement on the solid timber gates that were at the site entrance previously. The approved restoration scheme allows for a gated entrance. Permitted development rights also allow for a gate (of any form), wall, fence or other means of enclosure up to 2m in height².
15. To conclude on the proposed amended form of enclosure, the harm by reason of inappropriateness is clearly outweighed by other considerations and very special circumstances exist. The policy objection is overcome.
16. The erection of two brick piers (to a maximum height of 2m) and metal gates complies with Policy 49 of the Local Plan and policy on protecting the Green Belt in the Framework. This part of the development is acceptable. The removal of the walls and remaining two piers would be secured through compliance with the requirement of the notice and a planning condition to secure removal is not necessary.

² Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

Stable block

17. The notice sets out the dimensions of the stable block as being 12.8m in length, 3.6m in width and with a ridge height up to 3.3m. The building sits on a plinth, is clad in timber and the shallow pitched roof (with front canopy) is of dark coloured sheeting. The front elevation has typical stable doors and faces onto a gravel surfaced yard. The appellant is seeking permission on a permanent basis for the building but as a 'fallback' has suggested permitting the stables to remain as long as the land has permission for a traveller site.
18. In December 2018 the appellant made a retrospective planning application for the stable block for the keeping of horses and horse related tack/feed. In February 2019 planning permission was refused for a single reason: "The proposals would constitute inappropriate development within the Green Belt as the site does not provide an adequate-sized area of grazing land to support three horses occupying a stable building of this size, and as such, would be contrary to Policies 49 and 61 of the Bromley Local Plan."
19. The enforcement notice, in the Reasons section, identifies the harms as being to the openness and visual amenities of the Green Belt and cites Policy 49. Through the appeal the Council has confirmed that the objection about the inadequate grazing land to support the stabling of three horses remains.
20. The development is the construction of a new building. Policy 49 and the Framework state that this type of development is inappropriate in the Green Belt, although exceptions are identified. The stable block is on land that is within the authorised traveller site. No case is made that the stable block is a building for agriculture or that it is a replacement building. However, the appellant maintains that the building is an appropriate facility for outdoor recreation³. To fall within this exception all the tests have to be met and so the stable block must preserve the openness of the Green Belt.
21. Openness has a spatial and a visual aspect. The stable block is modest in size and appears as a traditional type of structure suitable for a countryside setting. Nevertheless, the development has introduced a building onto the land that has a solid form and is distinct from an open sided field shelter. The appellant has made reference to the stables being constructed on the site of a timber animal shelter serving a former animal sanctuary. The planning history outlined by the Council indicates that this use was not authorised, therefore any former building that may have been present in association with that use has little weight when assessing the effect on openness.
22. The stable block is sited on lower ground and within the surroundings are belts of trees, wooded hillsides and embankments and field hedgerows. These factors help to ensure the structure is not unduly prominent within its countryside setting within the Green Belt. In particular the building is not visible from Sevenoaks Road or the Station to the south. However, I found that even when vegetation is in full leaf the stable block is readily visible in short distance views from the public footpath in several places - near the site entrance through the gates, by the paddock to the north where the boundary hedgerow is sparse and a little further to the north where the hedgerow is less

³ In the Framework, paragraph 149 b) states "the provision of appropriate facilities (in connection with the existing use of land or the change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it".

- dense. Visibility would be greater outside the summer months when foliage is reduced.
23. My conclusion is that openness has not been preserved. A test set out in Policy 49 and criterion (b) of paragraph 149 of the Framework has not been met. Furthermore, there is no other exception that could apply to the building. Accordingly, the stable block is inappropriate development. The harm by reason of inappropriateness has substantial weight. Recognising that the loss of openness is limited, no additional weight is attributed to this effect.
24. More generally, the stable is a rural building of a suitable design and is sited in a good position that takes account of the local topography and landscape features. The development causes no harm to visual amenity or the character and appearance of the countryside to weigh in the planning balance.
25. The other potential harm is the inadequacy of grazing land to support the stabling of three horses. This concern of the Council may be related to criterion (e) of Policy 61 that seeks to avoid unacceptable intensification of horse related activities, with a view to safeguarding the appearance and character of the Green Belt, landscape and countryside. The supporting text to the policy refers to the need to have a commensurately large area of grazing land adjacent. The appellant completed the registration of title of 6 hectares of land adjoining the stables in October 2020, which he argues provides more than enough grazing land to serve the stables. In view of this change in circumstance I consider that the Council's objection has now been overcome.
26. In terms of other considerations, the appellant has explained about the purpose and use of the stable block and has demonstrated that the keeping, training and trading of the horses stabled there are integral to his traditional way of life and family history. The horses are trained daily, driven with carts regularly and traded at fairs. The acquisition of the adjacent land also indicates the commitment to this practice and the importance of owning horses to the appellant's way of life and culture.
27. The appellant owns the Land and an area of adjacent land. Nevertheless, the current position is that the stable block is sited on and used in conjunction with the traveller site, which has planning permission until 17 October 2024. To grant a permanent permission for the stable block, used for the keeping of horses, would potentially create tension with the current longer term planning objectives for the land.
28. As an Irish Traveller, the appellant has the protected characteristic of race under s149(7) of the Equality Act 2010. The practical consequences of not being able to have a stable block on the land would amount to an interference with his traditional way of life. Having due regard to the public sector equality duty and the positive obligation imposed by Article 8 to facilitate the gypsy way of life I attach substantial weight to this impact.
29. In conclusion, in the planning balance the harm to the Green Belt is not clearly outweighed by other considerations. Nevertheless, in the event the enforcement notice is upheld the stable block would have to be demolished. Whilst this requirement is necessary to achieve the purpose of the notice, I consider that this outcome would be disproportionate when account is taken of the positive obligation of Article 8 and the public sector equality duty. A planning permission for a temporary period is an obvious alternative.

30. I have taken full account of Planning Practice Guidance which advises that a planning condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. However, in this case the land use of the wider site should be clarified one way or the other at the end of the stated period. Furthermore, the building was erected without the benefit of permission, a form of intentional unauthorised development, where there would be a risk of its demolition being required.
31. All matters considered a temporary planning permission related to the time-limited permission for the caravan site is justified and strikes the right balance. The stable block complies with Policies 49 and 61 and policy on protecting the Green Belt in the Framework and is acceptable. A planning condition restricting the permission to a period of two years and 3 months will be imposed to protect the Green Belt and to enable a review of the acceptability of the stable block at the end of this period. A condition making the permission personal to the appellant, as suggested by the Council, is therefore not necessary.

Conclusion on ground (a)/deemed planning application

32. Planning permission will be granted for parts of the development only and to this extent there is success on the ground (a) appeal.

Appeal on ground (g)

33. The issue is whether the compliance period of three months is reasonable.
34. The appellant requested a period of at least six months but this extended period was primarily for making alternative arrangements for his horses should the stable block have to be removed. In view of the partial success on ground (a), three months is reasonable to remove the walls and two piers, a period that was accepted by the appellant.
35. The appeal on ground (g) fails and no variation to the notice is required.

Conclusion

36. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the double gates with supporting brick piers and for the stable block, but otherwise I will uphold the notice with a correction and refuse to grant planning permission in respect of the other part of the matters, namely the walls and the two piers nearest the public footpath. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

DECISION

37. It is directed that the enforcement notice be corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
38. The appeal is allowed in so far as it relates to the two piers and metal gates and the stable block. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of two brick piers and installation of metal gates attached to the piers at the entrance to the land and the erection of a stable block in approximately

the position marked "C" on the substitute plan annexed to this decision subject to the following conditions:

- 1) The two brick piers hereby permitted shall be reduced in height to no more than 2 metres as measured from ground level within 28 days of the date of this decision and shall be retained at that height thereafter.
 - 2) The stable block hereby permitted shall be for a limited period being the period of two years and 3 months from the date of this decision. At the end of this period the building hereby permitted shall be removed and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
39. The appeal is dismissed and the enforcement notice is upheld as corrected in relation to the walls and two piers and planning permission is refused in respect of the installation of brick walls, incorporating two brick piers at the entrance to the Land on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector



Plan

This is the plan referred to in my decision dated: 19 July 2022

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

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Bromley TN14 7HR**

Reference: APP/G5180/C/20/3255009

Scale: NTS

