
Appeal Decisions

Site visit made on 24 October 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2022

Appeal A Ref: APP/G5180/C/21/3287824

1 Eastcroft Villas, Luxted Road, Downe BR6 7LA

- 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 Mrs Trudi Garwood against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 22 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of agricultural land to incorporate it within the adjacent residential curtilage for off-street parking, erection of a shed, fencing and gate.
 - The requirements of the notice are:
 1. Cease the use of the land as part of residential curtilage of No.1 Eastcroft Villas,
 2. Remove the hardstanding, shed, fencing and gate,
 3. Return the land to its original condition as agricultural land, and
 4. Leave the land in a tidy condition.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) 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.
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Appeal B Ref: APP/G5180/C/21/3287834

1 Eastcroft Villas, Luxted Road, Downe BR6 7LA

- 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 Mrs Trudi Garwood against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 22 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of hardstanding for off-street parking, erection of a shed, fencing and gate on land that does not form part of the residential curtilage.
 - The requirements of the notice are:
 1. remove the hardstanding, shed, fencing and gate
 2. remove all materials associated with paragraph 5(1) above,
 3. restore the land to its original condition as agricultural land, and
 4. leave the land in a tidy condition.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) 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.
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Decisions

Appeals A and B

1. It is directed that the enforcement notices be:
 - varied by deleting the words "2 months" within section 6 (Time for Compliance) and its replacement with "6 months".
2. Subject to these variations, the appeals are dismissed, and the enforcement notices are upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. As set out above there are two appeals on this site. I have considered each appeal on its individual merits. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since both the material change of use notice (Appeal A) and the operational development notice (Appeal B) relate to the same development, and the considerations in both appeals are similar, I have therefore treated both cases together, to avoid duplication, except where otherwise indicated.
4. The Appeals have only been lodged under grounds (a), (f) and (g). However, it is clear from the substance of their appeal submissions that the appellant is also seeking to appeal under ground (c), in so far as they consider that the keeping of chickens and bees is covered under 'agricultural use' and therefore no change of use has occurred. As the Council have provided detailed comments on the appellant's statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.

Appeals A and B: The Appeals on ground (c)

5. This ground of appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.
6. The appeal site relates to a rectangular strip of agricultural land adjacent to No.1 Eastcroft Villas (No 1), purchased by the appellant and now forms part of the grounds associated with No 1. The appellant states that they have erected a fence and gate to separate the hardstanding from the front of the site from the rest of the land which is still used for agricultural use. In particular, the appellant states that the keeping of chickens and bees falls under 'agricultural use' and that the wooden shed is used to store materials and supplies in connection with this use and has also been used to hatch and raise their flock of chickens.
7. Section 336 of the 1990 Act defines agriculture amongst other things as horticulture, fruit growing, and the use of land for grazing. However, it is clear from the evidence submitted and my own observations during the site visit that the limited scale of the chicken and bee keeping at the appeal site would not amount to an agricultural use. There is also no separation or delineation of the appeal land from the former residential garden and grounds of No 1, which has the appearance and feel of a residential property and garden, where the

keeping of chickens and bees is incidental to the primary residential use of the site.

8. Section 55 (1) of the 1990 Act sets out that development means operational development, or the making of any material change in the use of any buildings or other land. The Land the subject of the Notice has, for the above reasons, changed its use from agriculture use to land used in connection with the residential property at No 1.
9. On the balance of probability and based on all the evidence before me it appears that a material change of use has occurred. Planning permission is required for such a change of use. There is none in place and the change of use is not permitted development. There has therefore been a breach of planning control and the appellant has not discharged the onus to demonstrate otherwise. Accordingly, the appeals fail on ground (c).

Appeals A and B: Ground (a) Appeal and the Deemed Planning Applications

Main Issues

10. The main issues are:

- whether the development amounts to inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area; and
- if the development is inappropriate, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development.

Reasons

Whether inappropriate development

11. The site lies within the Green Belt. National policy on Green Belt development is set out in Part 13 of the National Planning Policy Framework (the Framework). Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Of particular relevance to this appeal is Paragraph 149 which states that the construction of new buildings is inappropriate development in the Green Belt subject to a number of exceptions. Reference has also been made to Policy G2 of the London Plan, 2021 (London Plan), and Policy 49 of the Bromley Local Plan, 2019 (LP), which is consistent with the Framework. Accordingly, I have assessed these appeals based upon the Green Belt policies contained in the London Plan, LP, and the Framework.
12. The appellant considers the development falls within the exceptions listed under Paragraph 149 a) of the Framework which relates to buildings for agriculture and forestry. However, I have already found under the ground (c) appeals that the keeping of chickens and bees at the appeal site does not amount to an agricultural use of the land. Consequently, the development does not fall within the exception a) of paragraph 149.

13. The Framework states at paragraph 150 that certain forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. These include, amongst other things, local transport infrastructure which can demonstrate a requirement for a Green Belt location.
14. Local transport infrastructure can reasonably be interpreted to mean those assets which enable people and goods to move about efficiently. I am not persuaded that local transport infrastructure at paragraph 150 of the Framework would include a private off-street parking space which meets the needs of a single dwelling.
15. I therefore conclude that, the change of use and development does not satisfy any of the other exceptions in paragraphs 149 or 150 of the Framework. As such the development and change of use amounts to inappropriate development, which by definition, is harmful to the Green Belt.

Openness of the Green Belt

16. Paragraph 137 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The Courts have held that openness includes both visual and spatial dimensions.
17. Notwithstanding the presence of soft landscaping alongside the appeal site's boundary, which softens views into the site, the hard standing at the front of the site for car parking, together with the fence, gate and shed are still visible from public vantage points on Luxted Road. It therefore has an urbanising and encroaching effect, particularly when viewed against the backdrop of the undeveloped and adjacent agricultural land. It results in a loss of openness. Furthermore, a consequence of constructing a hard-surfaced area specifically intended for parking is the likely regular presence of vehicles parked upon it. This was apparent during my site visit, where a car was parked on the site, in front of the wooden gate and fence, so as to exacerbate the negative effects of the development and the loss of openness identified.
18. Therefore, in both spatial and visual terms, the development affects the openness of the Green Belt. Overall, I consider that the harm caused to the openness of the Green Belt is a limited one, but nevertheless has an impact. The development therefore conflicts with the Green Belt Protection aims of The Framework, Policy 49 of the LP, and Policy G2 of the London Plan.

Character and appearance

19. Prior to the current development, the evidence submitted indicates that the appeal site comprised agricultural land, devoid of development and formed part of the open countryside. The appellant states that the fences match the adjoining semi-detached property, and that the soft landscaping works implemented have enhanced biodiversity and the appearance of the site. Despite the implementation of new landscaping, the new hardstanding at the front, fences, gate and shed introduces a further domestic development within the countryside, which has an urbanising effect on the open rural landscape, harming the character and appearance of the area.

20. Whilst the Council has not put forward a development plan policy in relation to character and appearance in its reasons for taking enforcement action, I nevertheless find that there would be limited harm to the rural character and appearance of the site. Accordingly, the appeal development would conflict with the Framework which states at Paragraph 174 of the Frameworks that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Other considerations

21. This section of Luxted Road, outside the appeal site is a narrow country lane, and a bus route, that links Biggin Hill to Downe Village and Orpington. I observed during my site visit that there are no pavements on this part of the road, and also a limited number of passing places for passing traffic, and no on-street parking spaces available for visitors and trades people when visiting the appeal site. Photographs and statements submitted by the appellant and letters of support submitted from third parties, and the Downe Residents Association report on road safety also highlight similar highway issues.
22. The appeal property is a four bedroom semi-detached property. The evidence submitted indicates that prior to the current development, the property, benefitted from three off-street parking spaces (two spaces at the front of the property with an additional space provided within the garage). In effect, the appeal development has allowed the creation of one additional off-street parking space in front of the new wooden fence and gate (thus four spaces in total including the garage).
23. The EC Road Safety Limited Transport Appeal Statement (TS) submitted in support of the appeal states that the area in front of the fence and gate is required for additional much needed off-street parking, but also allows vehicles to turn within the appeal site and not on the highway, thereby improving public safety. It is also claimed that by leaving the area at the front of No 1 as a potential passing place, has helped alleviate traffic congestion on Luxted Road by allowing large vehicles (such as the R8 bus, waste collection vehicles and emergency vehicles) to pass unhindered. The TS concludes that permission should be granted to retain the land for parking and/or turning of vehicles.
24. However, during the site inspection, I witnessed that all three outside off-street parking spaces were in use, and as a result there was no space within the appeal site to turn a vehicle around so that it could enter and leave the site in a forward gear. Therefore, in reality, with all of these spaces in use, there is no additional turning space within the site.
25. In addition, I also observed that the garage was not being used for parking and note that the Council's statement makes clear that this was also the case during their own site visit in 2020. Therefore, there appears to be alternative valuable space within the garage which could be better managed and utilised for parking which does not result in harm to the green belt. For the aforementioned reasons and given that the appeal property already contained three off-street parking spaces prior to the unauthorised change of use, I attach only limited weight to the benefits of improvements to parking conditions and highway safety along Luxted Road.
26. The appellant states that the shed has been erected to support the keeping of bees and chickens on the site, and that the relocation of the shed may lead to

impacts on the living conditions of neighbouring occupiers, contrary to Local Plan policies. However, I have not been provided with any substantive evidence to explain why a suitable shed could not be accommodated within the original grounds of No 1. Furthermore, the Council have advised that permitted development rights still exist for the original dwelling, and as such they would have no objection to the principle of such a shed within the original grounds of No 1, should it comply with the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

27. The appellant further states that the fence and gate erected provide additional security, given that there have been a number of thefts locally. However, there is no substantive evidence before me to demonstrate that the current fence and gate are the only means of providing such security measures. As such, I only attach very limited weight to this.
28. The appellant has implemented new planting along the boundary of the parking area and at the rear of the site, which include a variety of plant and tree species, thereby attracting pollinating insects and bees and enhancing biodiversity. However, these benefits are lessened by provision of new development on this site, which include hard standing for parking, the erection of a shed, gates, and fences around the former agricultural land. I therefore attach limited weight to the biodiversity improvements.
29. My attention has been drawn to other planning permissions approved at Petley's Farm. However, only limited details of these other permissions have been submitted and therefore I am unable to make any direct comparisons to the current appeal development. Furthermore, the development at Petley's Farm appears to relate to a barn conversion for four residential properties which is not the same as the current appeal development before me. Therefore, the circumstances which led to those permissions would unlikely be the same as the current appeal development. I therefore attribute no weight to this other approval.

Green Belt balance and conclusions on ground (a) and the Deemed Planning Applications

30. I have found that the development amounts to inappropriate development in the Green Belt, and that limited harm has been caused to the openness of the Green Belt. These are matters to which I afford substantial weight. In addition, I have found that the development also harms the character and appearance of the area, to which I attach limited weight. The adverse impacts need to be weighed against the identified other considerations, noting that there are no significant benefits.
31. I acknowledge that the additional parking space provided by the additional area of hard standing benefit the appellant's household and reduces the potential for on-street parking nearby. However, the Framework is unapologetic in its direction on the weight to be given to inappropriate development in the Green Belt and that there must be a clear case for the other considerations to outweigh the harm. I find the additional off-street parking space to be a benefit in favour of the development. However, this in my view is insufficient to outweigh the harm to the Green Belt, to which I must attach substantial weight. Equally, the biodiversity and security measures provided, again whilst welcomed generally, cannot justify the development in this location.

32. In conclusion, the substantial weight to be given to Green Belt harm, and the other identified harm arising from the development, is not clearly outweighed by the other identified considerations. Consequently, the very special circumstances necessary to justify the development do not exist.
33. For the reasons given and with regard to all other matters raised, I conclude that the appeals on ground (a) should fail, and the deemed planning applications should be refused.

Appeals A and B: The appeals on Ground (f)

34. The appeals on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
35. For both appeals A and B, the enforcement notices require the removal of the hardstanding, shed, fencing and gate, and the restoration of the land to its original condition. For Appeal A, the notice also requires the use of the land as part of the residential curtilage of No 1 to cease. Therefore, the purpose of both notices is to remedy the breach of planning control rather than only remedy any injury to amenity.
36. The appellant states that the shed has been erected for agricultural use only, and therefore exception a) of Paragraph 149 of the Framework relating to buildings for agriculture and forestry should apply. However, I have already found under the appeals on grounds a) and c) that owing to its limited scale, the keeping of chickens and bees at the appeal site does not amount to an agricultural use, and therefore this exception does not apply.
37. The appellant also states that moving the shed to be within the original grounds of No 1 would harm the living conditions of the neighbouring occupier, which would contravene policy 37 of the LP. They also state that the removal of condition 3 of planning permission ref: 99/03565 which restricts the use of the garage for the parking of vehicles only, to allow for the storage of supplies kept in the shed, would enable them to remove the shed.
38. I observed that the appeal site benefits from a reasonable sized rear garden and I have not been provided with any substantive evidence to explain why the shed could not be accommodated within the original grounds of No 1. The Council have advised that the original dwelling still benefits from permitted development rights and that they have no objection to the principle of such a shed within the original grounds of No 1, which complies with the GPDO. Such a development would not require any assessment under the LP. Furthermore, it is not within the scope of this current enforcement appeal to remove a conditions of an earlier planning permission. Indeed, it is open to the appellant to submit a planning application to the Council for this if they so wish.
39. The appellant further states that planning permission is not required for fencing since it is under 2m in height, and therefore its removal is unnecessary. However, it is clear that the fence and gate erected, have sustained the unlawful use of the land in connection with residential use of the land at No 1. The fence and gate are part and parcel of the unauthorised use and should not

be viewed in isolation as has been suggested by the appellant. Furthermore, no substantive evidence has been presented to demonstrate that the fence and gate existed before the unauthorised change of use took place.

Notwithstanding that a fence and gate under 2m in height may not require planning permission in its own right, a notice directed at a material change of use, as is the case here, may require their removal.

40. I can appreciate the appellant's frustrations with regard to the Council's handling of their previous applications and pre-application. However, those applications do not form part of the current appeal before me. As the notices do no more than seek remedy of the breach, they are not excessive.
41. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
42. On this basis, the ground (f) appeals fail.

Appeals A and B: The appeals on Ground (g)

43. This ground of appeal is that the time given to comply with the notice is too short. The appellant asks that the time for compliance is extended from two to at least six months to allow further time to obtain quotations and to carry out the remedial works.
44. In my opinion, the 6 months suggested by the appellant would strike a more reasonable and proportionate balance. This would also provide the appellant with additional time to explore possibility of relocating the shed to the rear garden under permitted development rights, as suggested by the Council.
45. To this extent, the ground (g) appeals succeed, and I will vary the notices accordingly.

Conclusions

46. **Appeals A and B:** For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR