
Appeal Decision

Site visit made on 3 October 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 8TH NOVEMBER 2022

Appeal Ref: APP/Z3635/C/21/3270987

Land and premises known as Plot 10, Las Palmas Estate, Las Palmas Estate Road, Shepperton TW17 9HB

- 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 Paul Smith against an enforcement notice issued by Spelthorne Borough Council.
- The enforcement notice was issued on 3 February 2021.
- The breach of planning control as alleged in the notice is the unauthorised operational development of gates, fencing and posts, the approximate location shown in blue on the attached plan.
- The requirements of the notice are: 1. Removal of the gates and all resulting materials from the land; 2. Removal of the fencing and all resulting materials from the land; 3. Removal of the posts and all resulting materials from the land; 4. Restore the land to its former condition.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The National Planning Policy Framework was revised in July 2021 (Revised Framework), and the parties were given an opportunity to comment on this. Comments made have been taken into consideration.

The appeal on ground (a) and the deemed planning application (DPA)

Background

2. The appeal site is an area of woodland located in the Green Belt. It is the subject of a Tree Preservation Order¹ along with an Article 4 direction² which withdraws permitted development rights including in relation to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall, or other means of enclosure³.

¹ Ref 242/2012

² Dated 25 September 2012

³ Representing development granted planning permission by Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

Main Issues

3. The main issues are:

- Whether the appeal development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- The effect of the appeal development on the openness of the Green Belt; and
- Whether any 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 appeal development.

Reasons

Whether inappropriate development

4. The gates, fencing and posts have been erected in the Green Belt and the appellant advises that these were erected to prevent unlawful fly-tipping on the appeal site.
5. Paragraph 149 of the Framework states that the construction of new buildings should be regarded as inappropriate development unless falling into one of the listed exceptions. Paragraph 150 of the Framework states that certain other types of development, including engineering operations, are not inappropriate in the Green Belt, provided that they preserve openness and do not conflict with the purposes of including land in the Green Belt.
6. The appellant suggests that the gates, fencing and posts could be deemed an engineering operation, rather than a new 'building'. However, erection of gates, fencing and posts are typically undertaken by builders, rather than engineers. The erection of such items is commonly recognised as involving building operations, bearing in mind the definition of a 'building' in s336(1) of the Town and Country Planning Act 1990 (1990 Act)⁴ and the appellant has not drawn my attention to any particular features which would exclude these items from this definition⁵. Assessing against case law tests for buildings in terms of size, permanence and physical attachment, the combined significant size and solidity of the gates, fencing and posts leads me to conclude that these represent building operations.
7. Planning permission is sought for a temporary period of between 3-5 years, rather than for a permanent duration, in order to prevent unlawful fly-tipping on the appeal site while planting establishes. Nonetheless in view of the urbanising presence of the appeal development and relatively lengthy temporary duration, I find that this nonetheless represents inappropriate development as a new building in the Green Belt. Paragraph 149 of the Framework is therefore applicable. Since the items enforced against do not fall within any paragraph 149 exception, the gates, fencing and posts represent inappropriate development in the Green Belt.

⁴ Which states that a 'building' includes 'any structure or erection'

Openness

8. Paragraph 137 of the Framework states that a fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belt are stated as their openness and permanence.
9. The gates, fencing and posts together represent a substantial structure extending for a considerable length. Their green painted colour, along with saplings planted to the front of these items reduces their visual prominence. Nonetheless, by reason of their height, solid and urbanising appearance, these items together have a significant enclosing effect. In this way, they reduce the openness of the Green Belt. Taking into consideration that a temporary permission is proposed, the result is of a modest level of harm.

Other considerations

10. The appellant has stated that the gates, fencing and posts have been erected in order to prevent fly-tipping on the site, and draws my attention to the visual harm resulting from this illegal activity in the Green Belt. I have no substantive evidence though which indicates this problem to be a frequent occurrence; the Council notes only one incidence of this recorded and only a relatively small number of letters and emails were sent to the Council in relation to this issue over a period of some two years.
11. Whilst no doubt the gates, fencing and posts are effective in preventing any fly-tipping on the appeal site, the planting of mature specimen trees and shrubs would in my view be similarly effective, without the equivalent urbanising impact and loss of openness that results from the appeal development. I therefore give this consideration only very little weight. I do accept though that the fact that a temporary permission is proposed reduces the level of harm as compared to a permanent permission for the appeal development. The green painting of the items, along with saplings planted also very modestly reduce visual harm.
12. The appellant draws my attention to the presence of fencing on the site opposite. I do not have details though of the planning circumstances leading to that development and an obvious distinction can be drawn between the developed site opposite and the undeveloped appeal woodland site. This other development therefore merits no real weight in the balance.
13. The appellant makes no claim that the appeal development has a positive effect on the setting of the Lower Halliford Conservation Area ('CA') and even a preservative effect on the CA would only be neutral as a consideration.
14. The appellant makes reference to Green Belt case law which was determined in a different policy context from that currently extant. Whilst I note the underlying argument made by the appellant in relation to assessing the site's 'Green Belt value' in decision making, I am required to determine the appeal in accordance with extant local and national policy, absent any material considerations indicating otherwise. In any event, as part of a woodland, my view is that the appeal site has a significant 'Green Belt value'.

Green Belt balance

15. I found above that the appeal development is inappropriate development in the Green Belt and by definition it is harmful to the Green Belt; harm which the Framework indicates should be given substantial weight.
16. For the appeal on ground (a) to succeed, the weight of the other considerations must clearly outweigh the totality of the harm arising. I have given very little or no real weight to the considerations cited in support of the appeal development. Therefore, even bearing in mind the proposed temporary nature of the development, I find that the harm by reason of inappropriateness, and additional harm to openness identified, are clearly not outweighed by other considerations. Very special circumstances do not exist to justify the development. The development does not comply with national planning policy in the Framework to protect the Green Belt. There would be conflict also with saved policy GB1 of the Spelthorne Borough Local Plan 2001 which indicates that development will not be permitted in the Green Belt which would conflict with the purposes of the Green Belt and maintaining its openness.

Conclusion on ground (a) and the DPA

17. For the reasons given above and taking into account all other matters raised, the appeal development is not compliant with the development plan, read as a whole, and no considerations merit a decision other than in accordance with the development plan and the Framework.

The appeal on ground (f)

18. This ground of appeal is that the requirements of the notice exceed what is necessary.
19. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires removal of the appeal development and restoration of the land suggests that its purpose is to remedy the breach of planning control.
20. Granting of only a temporary permission would not remedy the breach and would not be acceptable in planning terms. Measures taken by the appellant to reduce the visual impact of the development by means of green painting and planting of saplings also do not remedy the breach, and fail to overcome the harm resulting from the breach. No lesser step is thus put forward by the appellant which would remedy the breach and accordingly, the appeal on ground (f) fails.

Conclusion

21. 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 on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

22. The appeal is 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 1990 Act as amended.

V Bond

INSPECTOR