



Appeal Decisions

Site visit made on 3 November 2022

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an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Appeal A Ref: APP/N4205/C/21/3289386

Land to rear of 125 Rutherford Drive, Bolton BL5 1DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Richard Grundy against an enforcement notice issued by Bolton Council.
 - The notice was issued on 30 November 2021.
 - The breach of planning control as alleged in the notice is the material change of use of the land from Listed Garden to land for domestic use incidental to 125 Rutherford Drive.
 - The requirements of the notice are i. Permanently cease to use the land for domestic use; and ii. Dismantle and permanently remove from the land the two timber buildings and timber fence (shown for identification purposes in the photographs attached to this notice) together with all fixtures and fittings.
 - The period for compliance with the requirements is 120 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/N4205/W/21/3287484

125 Rutherford Drive, Bolton BL5 1DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Grundy against the decision of Bolton Council.
 - The application Ref 11538/21, dated 17 June 2021, was refused by notice dated 4 November 2021.
 - The development proposed is change of use of land to private amenity/leisure area, boardwalk and erection of sheds/fencing ancillary to the enjoyment of the existing dwelling house.
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Decision

Appeal A

1. The enforcement notice is varied by the deletion of 'from Listed Garden to land' in the breach of planning control in section 3 of the notice. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Reasons

Background information

3. 125 Rutherford Drive is a semi-detached dwelling with a rear amenity area on the south side of the road. Along the rear boundary of the mainly hard surfaced

amenity area are metal railings within which there is a gate. Beyond the gate is an area of rough grass that is separated from a field to the south by a fence. The area of rough grass, which extends to the west behind the rear gardens of nos. 121 and 123 and within which there is a large pond, is the land that is the subject of the appeals. A timber fence, about two metres high, has been erected on the land close to the rear boundaries of nos. 121 and 123, and a timber boardwalk has been installed alongside the fence and over the pond. Two timber sheds have also been erected on the land close to the gate in the metal railings.

4. The rear boundaries of properties on the south side of Rutherford Drive is the boundary of the Green Belt. This part of the Green Belt is Hulton Park, which is listed on the National Heritage List for England as a Grade II Park and Garden.

The ground (b) appeal in Appeal A

5. The appeal land remains part of the listed garden so the breach of planning control, in this regard and as stated in the enforcement notice, has not occurred. To this extent the ground (b) appeal succeeds. However, there is no statutory requirement to state the previous use of land in the breach of planning control so this has been varied by the deletion of 'from Listed Garden to land'. This variation does not cause any injustice to either main party.

6. The Appellant maintains that he and his family have been using the land for ancillary amenity/leisure use rather than domestic use. But the ancillary amenity/leisure use of the land is wholly associated with, and supported by, the occupation of his domestic property and is therefore, in itself, a domestic use of land. In this regard the ground (b) appeal fails.

The ground (c) appeal in Appeal A

7. The use of land for amenity/leisure use or domestic use, where the land was previously in a different use, is a material change in the use of the land. Such a material change of use of land, under the provisions of Section 55(1) of the Town and Country Planning Act 1990, constitutes development and under the provisions of Section 57(1) planning permission is required for any development of land.

8. The sheds and the fence are associated with the use of the land for amenity/leisure/domestic use and, in these circumstances, it is not necessary for there to be any reference to them in the breach of planning control. The timber boardwalk is not mentioned in the enforcement notice and the Council has confirmed that it is not subject to enforcement action.

9. The Appellant's Agent has commented, with regard to the fence, that the "LPA have inferred that a 2.0m fence may be permitted development" but has not provided any evidence to substantiate such an inference or to justify a conclusion that the fence is permitted development. Planning permission is required for the breach of planning control, a change in the use of land and associated operational development, and has not been granted. The ground (c) appeal thus fails.

The ground (a) appeal in Appeal A and Appeal B

10. The development that is the subject of the planning appeal is described on the application form differently to the breach of planning control described in the enforcement notice. Setting aside the boardwalk, which is not mentioned in the notice, the breach of planning control and the proposed development are, in

essence, the same thing. The ground (a) appeal and the planning appeal will therefore be considered together.

11. The main issues are; first, whether the change of use of the land is inappropriate development in the Green Belt and this requires an assessment of whether the use of the land harms the openness of the area and compromises the purposes of including land in the Green Belt; second, the effect of the timber buildings and the fence on the character and appearance of the area and on the historic significance of Hulton Park; and third, if the use of the land is inappropriate development whether that harm, and any other harm, is clearly outweighed by other considerations such that very special circumstances exist in this case.

The first issue – inappropriate development

12. The breach of planning control is the material change in the use of the land, and planning permission is sought in the planning appeal for a change in the use of the land. Paragraph 150 of the National Planning Policy Framework (NPPF) states that material changes in the use of land, amongst other forms of development, are not inappropriate development in the Green Belt if they preserve its openness and do not conflict with the purposes of including land in the Green Belt. This national policy is carried forward in policy CG7AP of Bolton's Allocations Plan (BAP).

13. The two sheds are discreetly located close to the gate in the metal railings but they are, separately and collectively, structures that reduce, and therefore do not preserve, the spatial openness of the Green Belt. The fence, given its form, may not be having a significant effect on spatial openness but it does, given that form and its height, have a significant adverse effect on the visual openness of the Green Belt. The boardwalk, which is mentioned in the proposed development in the planning appeal, does not undermine the openness of the Green Belt.

14. One of the five purposes of the Green Belt set out in paragraph 138 of the NPPF is to assist in safeguarding the countryside from encroachment. Success in the ground (a) appeal would result in a grant of planning permission for a change of use of land for domestic use incidental to 125 Rutherford Drive and success in the planning appeal would result in a change of use of land to private amenity/leisure area, boardwalk and erection of sheds/fencing ancillary to the enjoyment of the existing dwelling house (emphasis added). In both cases the change of use of land would result in domestic use of what was previously countryside. The continuing use of land for domestic use would not safeguard the countryside from encroachment and would undermine a purpose of the Green Belt.

15. The Appellant's Agent has referred to other paragraphs of the NPPF but these do not provide any support for the continued use of the land for domestic use. The change of use of the land and the operational development that is associated with it has not preserved the openness of the Green Belt and conflicts with one of the purposes of including land in the Green Belt, and conflicts with BAP policy CG7AP. The change of use of the land is inappropriate development which is, by definition and with regard to paragraph 147 of the NPPF, harmful to the Green Belt and should not be approved except in very special circumstances.

The second issue - the character and appearance of the area and the historic significance of Hulton Park

16. Use of the land for domestic purposes associated with the use of the dwellinghouse is unlikely to have any significant adverse effect on the character and appearance of the area. The two sheds are unobtrusive and sensitively located

in a corner of the appeal land and close to an outbuilding in the rear amenity area of the dwellinghouse. They are, as is the boardwalk, visually neutral and do not harm the character and appearance of the area. The fence, however, given its substantial length, its height and its stark form, is visually unappealing and obtrusive and it intrudes into views across the land and, probably, from the wider area to the south. The fence has a significant adverse effect on the character and appearance of the area and conflicts with policy CG3 of the Council's Core Strategy.

17. Hulton Park is a landscaped park that was established in the early 19th century. Within the park are the remains of pleasure grounds and a kitchen garden but otherwise the park comprises areas of open farmed grassland interspersed by plantations. The conclusions reached in the previous paragraph can be repeated with regard to the effect of the use of the land and its associated built development on the historic significance of Hulton Park. It is only the fence that is visually harmful though the harm to the significance of the heritage asset, with regard to paragraph 202 of the NPPF, is less than substantial. The unauthorised use of the land is a private use and there are no public benefits to weigh against the less than substantial harm caused by the fence. The fence conflicts with policy OA4 of the Council's Core Strategy.

The third issue – very special circumstances

18. The Appellant has referred to a hybrid planning permission that has recently been granted, on appeal, for a major development at Hulton Park and on adjoining land. The major development includes a golf course and associated golf related development, a hotel and conference centre, and over 1000 dwellings. About 83% of the site is within the Green Belt and the major development would have an effect on the historic significance of Hulton Park. The Inspector concluded that the benefits of the scheme "...clearly outweigh the identified Green Belt and non-Green Belt harm", and that "...very special circumstances exist, which justify permitting the proposed development in the Green Belt".

19. The permitted development notwithstanding planning decisions must be made with regard to current planning policy and with regard to current land designations. The appeal land is in the Green Belt and in a Grade II registered park and garden and the proposed continuing change of use and the proposed retention of associated operational development have been considered with regard to current national and local planning policy. The planning permission for the major development does not outweigh the harm that would continue to be caused.

20. All other considerations mentioned in support of the appeal have been taken into account but they do not, either individually or collectively, clearly outweigh the harm by reason of inappropriateness, to the character and appearance of the area and to the historic significance of Hulton Park. Very special circumstances do not therefore exist in this case.

Conclusion in the ground (a) appeal and in the planning appeal

21. The change of use of the appeal land and the proposed retention of the sheds and the fence, and the boardwalk in the planning appeal, is inappropriate development in the Green Belt and causes harm to the character and appearance of the area and to the historic significance of Hulton Park. The harm caused is not clearly outweighed by other considerations and very special circumstances do not therefore exist. The ground (a) appeal and the planning appeal thus fail.

The ground (f) appeal in Appeal A

22. An enforcement notice alleging a material change of use of land does not need to refer to operational development that has been carried out to facilitate and support the change of use. This principle is established in case law, particularly *Murfitt v SSE & East Cambridgeshire DC [1980] JPL 598*. Furthermore, such a notice may require that the ancillary works are removed in order to remedy the breach of planning control. In this regard the requirements of the notice are not excessive and the ground (f) appeal fails.

The ground (g) appeal in Appeal A

23. The suggestion that there is a "...shortage of builders/labourers etc." has not been substantiated and the recent and protracted health crisis is over. 120 days, about four months, is a reasonable time period within which to carry out the requirements of the notice. The ground (g) appeal thus fails.

John Braithwaite

Inspector