



Appeal Decisions

Site visit made on 22 October 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal A: Ref APP/K0425/C/21/3284343

Land at Holpenny Barn, Upper Icknield Way, Saunderton, Buckinghamshire shown edged red on the plan attached to the notice ("the Land")

- 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 Rodney Sammons against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice was issued on 21 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the laying of hardstanding and the partial removal of a hedgerow.
 - The requirements of the notice are to:
 1. Replant native hedgerow with minimum whip size of 80-100cm (as per the guidance attached to this Notice) along the green line on the plan attached to the notice;
 2. Remove the hardstanding (outlined in blue on the plan attached to the notice);
 3. Remove from the Land, all materials that are incurred subject to the compliance of step 2 of this Notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: Ref APP/K0425/W/21/3284346

Holpenny Barn, Princes Risborough HP27 9NN

- 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 Rodney Sammons against the decision of Buckinghamshire Council.
 - The application Ref 20/07685/FUL, dated 22 July 2020, was refused by notice dated 15 June 2021.
 - The development is access and hardstanding.
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Decisions

1. Appeal A is dismissed and the enforcement notice is upheld.
Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B is dismissed.

Procedural Matters

3. The development in Appeal B, for which part-retrospective planning permission is sought, is essentially the same development as attacked by the enforcement notice in Appeal A. However, the former also proposes additional hedge planting.

Background

4. The site comprises land off Upper Icknield Way, upon which a barn was erected in 2006 under agricultural permitted development rights. It is of relatively small size (0.4 Ha) for agricultural land, being retained when most of the land parcel of which it was incorporated was sold to neighbouring landowners to the south-east in 2016. According to the appellant, the land is still used for a hay crop and vehicular access is needed to cut the crop and to access the barn for storage.

Appeal A – Ground (c)

5. For an appeal to be successful under this ground, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the enforcement notice do not constitute a breach of planning control.
6. Section 171A(1) provides for the purposes of the Act that carrying out development without the required planning permission constitutes a breach of planning control.
7. Firstly, I am satisfied that the matters attacked by the notice - the laying of hardstanding and the partial removal of a hedgerow to form an access to the site - comprise operational development since they result in physical alteration to the land with some degree of permanence.
8. The appellant suggests that *general* planning permission is afforded to the development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
9. An injunction¹ was granted on 30th April 2009 affecting all of the larger land parcel (OS parcel 4162), including the portion of it currently owned by the appellant and which constitutes the appeal site. It prevents any development on the Land as defined in section 55 of the Act without the *express* grant of planning including the laying of hardcore and creation of hard standing and/or access roads.
10. The development does not benefit from express planning permission, and the injunction is explicit that development is unlawful without it. The appellant suggests that the injunction does not apply in this case – including a legal argument that he is not one of the defendants subject to it (even as a ‘person unknown’). However, even if that were so, I do not consider that the development would benefit from general planning permission under the GPDO since (even if I considered the development reasonably necessary for the purposes of agriculture within the unit) the external appearance of the premises is materially affected². My reasoning for this finding is clear from my comments below as regards the planning merits of the development.
11. For these reasons, I am not satisfied on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
12. Accordingly, the ground (c) appeal does not succeed.

¹ Injunction Order Claim Number HQ09X01817

² Limitation to permitted development under Schedule 2, Part 6, Class B, B.1(b) of the GPDO

Appeal B; Appeal A - Ground (a) and the deemed planning application

Main issues

13. The main issues in respect of both appeals are:

- whether the developments are inappropriate development in the Green Belt, including the effect of the developments upon the openness of it;
- the effect of the developments on the character and appearance of the area including upon the Chilterns Area of Outstanding Natural Beauty (AONB);
- the effect of the developments upon ecology and biodiversity; and
- would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the developments?

Reasons

Green Belt, character and appearance

14. The appeal site is situated within the Green Belt in an area largely characterised by open fields and the large verdant gardens of spacious plots occupied by dwellings.
15. The Government attaches great importance to Green Belts, as made clear in the National Planning Policy Framework (the Framework). 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 permanence³.
16. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances⁴.
17. The Framework states at paragraph 150 that certain forms of development – including engineering operations – are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
18. Notwithstanding the removal of any hardstanding associated with the earlier site access arrangements, which I consider to be far less substantial than what has been created under the developments, the significant extent of the hardstanding adjacent to the barn (which can be seen, at least in part, from Upper Icknield Way through gaps in the hedgerow) clearly and materially diminishes the spatial and visual openness of this agricultural land within its otherwise spacious local context and encroaches upon the countryside setting. Accordingly, I find it to be inappropriate development within the Green Belt.
19. Much of the appellant's submissions make the case that the development is reasonably necessary for an existing agricultural trade or business, with reference to Policy DM42 (Managing Development in the Green Belt) of the Wycombe District Local Plan (2019) (LP). However, DM42 is explicit as regards that criterion (1.b)i.) in that it only applies in cases where the development is

³ Paragraph 137 of the Framework

⁴ Paragraph 147 of the Framework

not inappropriate under the Framework. For the reasons I have given above, the engineering operations are inappropriate under the Framework as they do not preserve the openness of the Green Belt and conflict with the purposes of including land within it.

20. The inappropriate addition of the hardstanding to the small agricultural unit also appears urbanising and harmfully incongruous with the landscape character of the AONB. In this way, and notwithstanding the lower level of the access compared to pre-existing, the development causes significant harm to the character and appearance of the area.

Ecology and biodiversity

21. The appeal developments are associated with the removal of a section of native hedging, to form the new access. This causes moderate harm in respect of Appeal A due to loss of habitat. However, it is proposed in respect of Appeal B to include the stopping up of the earlier access (with re-planted hedging) and the planting of a new hedge around the barn. This may bring net benefits to ecology and biodiversity.

Other considerations

22. The pre-existing access from Upper Icknield Way, in use since the erection of the barn, is further away from the new access and hardstanding of the appeal development that had been created near the barn. It is the part of the appellant's case that the earlier access requires a significant area of the field to be used for access to the barn, plus a turning area within the site, reducing the productivity of the field. I accept that this is a moderate benefit of the development (Appeals A and B).
23. The hardstanding provides for the parking of cars, light machinery and cycles (without the need to cross the field) and will also provide easier access to the barn for disabled persons. These are also moderate benefits of the appeal developments.

Green Belt balancing

24. Paragraph 148 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found significant harm caused to the character and appearance of the area, and moderate harm to ecology and biodiversity in respect of Appeal A. In totality, the harm is of a magnitude which weighs very heavily against the development in Appeals A and B.
25. Having considered all matters raised in support of the appeal development (Appeals A and B) I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the development is contrary to the guidance in the Framework and Policies CP8, CP9, DM30, DM32, DM35, DM42 (and DM34 in respect of Appeal A) of the LP, which together seek to protect the Green Belt and character and appearance (and biodiversity).
26. Accordingly, I will not grant planning permission in respect of Appeals A and B with or without conditions, there being no conditions I could reasonably impose that would make the appeal developments acceptable.

Conclusions

27. For the reasons given above I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice in respect of Appeal A and refuse to grant planning permission.

Andrew Walker

INSPECTOR