



Appeal Decisions

Site visit made on 22 November 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal A Ref: APP/H2265/C/21/3280083

7 Oakwood Farm, Fairseat, Sevenoaks, Kent TN15 7LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mrs Renu Dhariwal against an enforcement notice issued by Tonbridge and Malling Borough Council.
- The notice was issued on 29 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of former paddock land to extended residential garden.
- The requirements of the notice are:
To remove all unauthorised development from the land as shown hatched on the attached plan, including:
 - outdoor exercise equipment
 - dog kennels/pens
 - brick paths
 - mix of soft and hard landscaping on boundary
 - blockwork firepit
 - boundary fencing.
- The period for compliance with the requirements is: three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) 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 Decision: The enforcement notice is quashed.

Appeal B Ref: APP/H2265/W/21/3278421

7 Oakwood Farm, Fairseat, Sevenoaks TN15 7LT

- 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 Mrs Renu Dhariwal against the decision of Tonbridge and Malling Borough Council.
- The application Ref TM/21/00368/FL, dated 10 February 2021, was refused by notice dated 23 June 2021.
- The development proposed is change of use from paddock to residential garden.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. Appeals A and B relate to the same development. Both refer to a change of use from paddock to residential garden. However, it is not necessary in a description of development, whether for the purposes of a planning application or an allegation on an enforcement notice, to refer to the previous use.
2. "Paddock" is not a clearly defined use of land. According to the Oxford English Dictionary it means a small field or enclosure where horses are kept or exercised. The keeping and exercising of horses are not normally agricultural

uses in planning terms. I understand that, prior to the construction of the house and neighbouring properties, this area formed a farmyard and its immediate surrounds. That appears to support the Council's assertion that the previous use of the land was agricultural. For these reasons, I consider the reference to paddock in both descriptions of development is somewhat unclear.

3. In addition, I note that the new use is described as residential garden. Similar to the reference to "paddock", "garden" is unclear in relation to a use in planning terms. For these reasons, I consider the development in both appeals to be the change of use of land to residential.
4. The reasons for issuing the enforcement notice subject of appeal A and the refusal of planning permission subject of appeal B refer to the introduction of a close boarded fence. There are close boarded fences to either side of the land. However, these are not referred to in the breach of planning control on the enforcement notice or the description of development subject of the planning application. The requirements of the enforcement notice include that they be removed. Given they are referred to in the reasons for issuing the notice, they are more than a part of the change of use and ought to be included within the breach of planning control alleged. The fences do not form part of the development subject of appeal B
5. The plan attached to the enforcement notice subject of appeal A identifies the land shaded pink. This includes the house and its immediate surroundings. However, the reference to the paddock in the enforcement notice suggests that it is only intended to relate to the land identified as paddock on the plan supplied by the Council from the file relating to the original planning permission¹ for the house, not the whole garden. I would need to correct the plan referred to in the enforcement notice if I were to uphold the notice.
6. The Council have submitted the decision notice relating to the planning permission for the house along with the above plan to which I understand that decision relates. However, the plan supplied is not the site plan and does not identify the land to which the planning permission relates. If the "paddock" were within a red line on the application site plan, the land may have planning permission for residential use. There is no condition restricting the use of this land attached to the planning permission. However, there is a condition restricting development on the land that would be permitted under Parts 1 and 2 of the Town and Country Planning (General Permitted Development) (Order) 2015 (GPDO). The Council suggest this condition applies to the land. If so, that would indicate the land was within the site subject of that planning permission such that planning permission was granted for the use of the land in association with the residential dwellings it permitted.
7. Section 173(2) of the Act states that an enforcement notice must enable any person on whom a copy is served to know what the matters constituting the breach of planning control are. For the above reasons, the enforcement notice is unclear such that the person on whom this notice was served could not know what those matters are. I consider that to correct the notice in this regard would cause injustice to the appellant as they may have made their case differently had the notice been issued in another form.

¹ Planning permission reference TM/10/00887/FUL

8. The requirements of the enforcement notice state that all unauthorised development be removed from the land, including the structures and residential paraphernalia listed. The change of use of land comprises development under section 55 of the Act, but the requirement indicates that it is the structures and residential paraphernalia that is to be removed, rather than the use to cease. Given the terms of the allegation of the breach of planning control, it appears the intention of the Council is to stop the use of the land for residential purposes.
9. Section 173(3) and (4) of the Act requires enforcement notices to specify the steps required to be taken or the activities to cease in order to either remedy the breach, for example by discontinuing the use of the land, or remedy any injury to amenity caused by the breach. The requirements would result in the removal of domestic paraphernalia on the land that may partly restore the land to its condition before the breach. That may remedy the injury to amenity caused by the breach to some extent. However, it would not remedy the breach of planning control. It is unclear, on the face of the notice, whether the Council's intention was to remedy the breach or the injury to amenity caused by that breach.
10. It would not be possible to amend the notice to require the cessation of the use as this would make it more onerous. As such, it would cause injustice to the appellant who may have made their case in a different form had it been issued with that requirement.
11. In addition, the lack of a clear requirement to cease the use means that section 173(11) of the Act would apply. That section states that planning permission shall be treated as having been granted by virtue of section 73A of the Act in respect of the change of use.
12. I have raised many of these issues during the course of the appeal and suggested that the notice may be a nullity or invalid. However, I have not received a response from the Council. Whilst I could correct the notice in relation to many of these issues, some would result in injustice to the appellant. In any event, the corrections would mean the notice would be substantially rewritten.
13. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the land on which the breach of planning control is alleged to have taken place. It is not open to me to correct the errors in accordance with my powers under section 176(1) of the 1990 Act as amended, since I have concluded injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (c), (d) and (f) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.
14. I will proceed to determine appeal B. I note that I have referred to the possibility that the land already has planning permission for residential use. However, it is not for me, on an appeal under section 78 of the Act, to determine whether or not that use is lawful. It is open to the appellant to apply to the Council for a separate determination under sections 191/192 of the Act regardless of the outcome of the appeal.

Appeal B

Main Issues

15. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- the effect of the change of use on the intrinsic character and beauty of the landscape;
- Whether there are other considerations weighing in favour of the proposal; and
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasoning

Inappropriate development

16. The National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Certain forms of development are, however, not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. These include material changes in the use of land. Policy CP3 of the Tonbridge and Malling Core Strategy (CS) states that national Green Belt policy, contained within the Framework, will be applied in this location.
17. The land is used as garden associated with the adjacent house at 7 Oakwood Farm. Such a residential use is, in spatial terms, essentially open. Nevertheless, structures are frequently placed within gardens, some of which may not constitute built development, such that in reality the use does affect spatial openness. I note that the appellant suggests, for example, that the dog pens are not built development such that they do not constitute development requiring planning permission. However, they do affect the spatial openness of the land.
18. The residential use also differs visually from the previous agricultural use, with domestic paraphernalia and structures stored on the land. I note that the landscaping and fences on the site result in a more domestic appearance to the land, which affects the visual openness of the site.
19. The purposes of the Green Belt include assisting in safeguarding the countryside from encroachment. The domestic appearance of the land resulting from the residential use has led to this urban use encroaching into the countryside.
20. For these reasons, I conclude that the residential use does not preserve the openness of the Green Belt and conflicts with the purposes of including land within it. As such, it constitutes inappropriate development in the Green Belt such that it conflicts with Policy CP3 of the CS and the Framework.

Intrinsic character and beauty of the landscape

21. The paddock is located to the rear of three houses at Oakwood Farm. The appeal site comprises the middle section of the paddock. Close boarded fences and laurel hedges have been provided to either side of this section of the paddock. To another two sides of the paddock is other residential development with gardens bordering the paddock, including to the rear boundary of the section of paddock subject of this appeal. To the other side is an open field.
22. It appears that the paddock is intended to provide an open field to the rear of the houses, connected to its previous agricultural use. Prior to the change of use of the land, the appeal site would have formed part of the larger paddock. Its appearance would have reflected that of the neighbouring countryside. However, the change of use, landscaping and structures placed upon it have resulted in a more domestic appearance. Whilst that has affected the intrinsic character and beauty of the landscape in this location, the relationship to other residential development means that effect is modest.
23. For these reasons, I conclude that the change of use of the land to residential has resulted in a modest effect on the character and beauty of the landscape. Consequently, the change of use is contrary to Policy SQ1 of the Managing Development and the Environment Development Plan Document, Policies CP14 and CP24 of the CS and the Framework that indicate the forms of development appropriate in the rural area.

Other considerations

24. My attention has been drawn to noise from the dogs kept on the land. However, the evidence indicates the keeping of dogs by the appellant is ancillary or incidental to the residential use. This does not affect my conclusions.
25. The appellant suggests that the residential use of the land already has planning permission resulting from the planning permission for the house. I have concluded above that may be the case. However, I have not been provided with a site plan showing the area over which that planning permission exists. In addition, it was subject to a number of conditions, including removing permitted development rights under Parts 1 and 2 of the GPDO. Those conditions seek to retain the land as open, in accordance with its location within the Green Belt. No conditions have been suggested in this case, so I have considered this appeal on the basis that I would not attach any conditions.

Conclusion

26. I have found that the residential use of the land to the rear of 7 Oakwood Farm does not preserve the openness of the Green Belt and conflicts with the purposes of including land within it. As such, it is inappropriate development. In addition, it causes some harm to the character and beauty of the landscape. I note that the land may already have planning permission for the use, subject to conditions. I have not found any other considerations that count in favour of the development. As such, the substantial weight to be given to Green Belt harm and any other harm is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances. Therefore, the proposed

development is contrary to Policy SP3 of the CS and the Framework that seek to protect the Green Belt from inappropriate development.

27. On the basis of the above considerations, I conclude that the appeal should be dismissed.

Formal Decision

Appeal A

28. The enforcement notice is quashed.

Appeal B

29. The appeal is dismissed.

AJ Steen

INSPECTOR