



Appeal Decisions

Inquiry held on 21 February 2023

Site visit made on 21 February 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 February 2023

Appeal Refs: APP/P0119/C/21/3280851, 52 and 53

The Oaks, Down Road, Winterbourne Down, Bristol BS36 1AU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr S Jenkins, Mr D Jenkins and Mrs L Jenkins against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice was issued on 13 July 2021.
 - The breach of planning control as alleged in the notice is the change of use of the land from agriculture to a mixed use of residential use (including the stationing of two caravans to facilitate the residential use) and open storage, including of waste materials, and the erection of storage buildings, the erection of fencing and gates on the front boundary, the construction of areas of hard surfacing and track, the installation of utilities (water, electric and gas), the digging of and construction of ponds, and other incidental structures and engineering operations (including the bases for the caravans), all to facilitate or be used in association with the unauthorised change of use.
 - The requirements of the notice are 1. Cease the residential and open storage uses; 2. Remove from the land all caravans, stored materials, buildings and structures (excluding the polytunnel in the approximate location marked "X" on the attached plan), areas of hard surfacing and track, other building or engineering works (including bases for the caravans), utilities and associated infrastructure (water, electric and gas) and sewage/waste treatment plant installed in association with the unauthorised use (i.e. excluding any that exists on the land solely to serve the adjacent property Greystones, and which existed prior to the commencement of the breach); and 3. Fill in with topsoil all ponds or other engineered excavations and restore the land to grassland.
 - The period for compliance with requirement one is nine months and the period for compliance with requirements two and three is twelve months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/P0119/W/20/3264388

The Oaks, Down Road, Winterbourne Down, Bristol BS36 1AU

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeals are made by Mr D Jenkins and Mrs L Jenkins against the decision of South Gloucestershire Council.
 - The application Ref P19/15637/F, dated 23 October 2019, was refused by notice dated 5 June 2020.
 - The development proposed is change of use of land to allow the stationing of two mobile homes for use by a single family alongside two domestic buildings.
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Decision

1. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the 'change of use of the land from agriculture to a mixed use of residential use (including the stationing of two caravans to facilitate the residential use) and open storage, including of waste materials, and the erection of storage buildings, the construction of areas of hard surfacing and track, the installation of utilities (water, electric and gas), the digging of and construction of ponds, and other incidental structures and engineering operations (including the bases for the caravans), all to facilitate or be used in association with the change of use' at The Oaks, Down Road, Winterbourne Down, Bristol, as shown on the plan attached to the notice, subject to the following conditions:

1. Residential use of the land and use of the buildings hereby permitted shall be carried out only by Mr S J Jenkins, Mr D Jenkins and Mrs L Jenkins and their dependant relatives.
2. Within three months of the date of this decision a landscaping scheme shall be submitted to the local planning authority for their written approval. The scheme shall include details of all existing trees and hedgerows, trees and hedgerows to be retained, trees and shrubs to be planted, maintenance of proposed planting, proposed boundary treatments and hardstandings, and a timetable for implementation of the proposed landscaping. The landscaping scheme shall be carried out as approved in full and in accordance with the approved timetable for implementation.
3. No commercial activities or storage of materials shall be carried out on the land.
4. Development on the land shall be limited to that shown on Plan 2 'Elevations Mobile Home (Acorn)', Plan 3 'Floor Plan (Acorn) Illustration', Plan 4 'Floor Plan (Sheraton) Illustration', Plan 5 'Elevations of Mobile Home', Plan 6 'Floor Plan and Elevations of Shed 2', Plan 7 'Illustration Plan of Polytunnel', Plan 8 'Floor Plan and Elevations of Shed 1' and Plan 9 'Site Plan' (received 28 October 2019), 'Topographical Survey/Block Plan' (received 30 October 2019), 'Revised Access Plan' and 'Site Location Plan' (received 4 November 2019) and 'Mobile Home (Acorn) Floor Plan' and 'Mobile Home (Sheraton) Floor Plan' (received 14 November 2019).
5. Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development as specified in Class A (fences, gates and walls) of Part 2 (Minor Operations) shall be erected on the land, other than development indicated on the plans referred to in condition 4, without the prior written permission of the local planning authority.

Procedural matters

2. The address of the appeal site on the planning application form differs from that stated elsewhere, such as on the enforcement notice. The main parties agreed at the Inquiry that the address of the site is as stated above.
3. The ground (a) enforcement appeals and the planning appeals relate, essentially, to the same development. There is, however, a difference between the

description of the development in the enforcement notice and that stated on the planning application form. It was agreed by the main parties at the Inquiry that, subject to minor amendments, the description of the development in the enforcement notice should be used if planning permission was to be granted.

Reasons

The site and its surroundings

4. The appeal site is roughly rectangular and about 0.6 hectares. It is about 45 metres wide and 120 metres deep. Set back from the footpath to Down Road, which is to the south of the site, is a temporary plywood fence and gates. Behind the fence and gates is a significant mound of building waste material. The two static caravans and the two storage buildings, which are the principal structures of the unauthorised development, are at the rear of the site.

5. To the west of the site is a residential property, Bourne End, which comprises a former farmhouse that has been subdivided to create two dwellings, a former shed that has been converted to a dwelling, and other sheds to the rear. To the east of the site is a substantial former single dwelling, Greystones, which has been subdivided to create two dwellings, and a cul-de-sac development of six dwellings, Damsons Court, created by the conversion of former farm buildings.

The ground (d) enforcement appeals

6. The onus of proof in the ground (d) appeals is on the Appellants and they must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the alleged use of the land occurred more than ten years before the date of issue of the enforcement notices, and that the use subsisted uninterrupted during that period and without material change. For the ground (d) appeals to be successful the use must therefore have occurred before 13 July 2011. The ground (d) appeals relate to the storage of waste materials.

7. The Oaks was formerly land associated with Greystones, which was previously owned by Mr and Mrs Jenkins. Mr Jenkins is retired but was a builder and property developer and he commenced implementation of a planning permission, which was granted in November 2004, for 'demolition of existing house and erection of replacement dwelling' on land to the west of The Oaks. At that time there was access between Greystones and The Oaks towards Down Road. The Appellants maintain, in their Statutory Declarations on this matter, that the storage of waste material at The Oaks from the Greystones development, commenced in 2007. They also rely on an aerial photograph taken in 2009.

8. The aerial photograph does not show anything other than a motocross track on the land, which was created for the enjoyment of the children of Mr and Mrs Jenkins, and disturbed ground created by activity close to the access between the two areas of land. It does not show any significant deposits of waste material. It is quite possible, as claimed by the Appellants, that waste material was brought onto The Oaks prior to 13 July 2011. But there is no evidence to indicate how much was introduced before that date and whether the works to introduce waste material constituted development and therefore a change in the use of land. There is insufficient precise and unambiguous evidence to justify a conclusion that the storage of waste material at The Oaks was a material change in the use of the land that occurred prior to 13 July 2011. The ground (d) appeals thus fail.

The ground (a) enforcement appeals and the planning appeals

9. The appeal site is in the Green Belt. With regard to national and local planning policy on development in the Green Belt the Council has accepted, through Mr Stockdale at the Inquiry, that the alleged unauthorised change in use of the land and the unauthorised operational development on it does not cause any harm, such as to the character of the area, in addition to that, potentially, by reason of inappropriateness.

10. The main issues are; first, whether the breach of planning control is inappropriate development in the Green Belt; and second, whether the harm by reason of inappropriateness, if there is any, is clearly outweighed by other considerations such that very special circumstances exist.

The first issue – inappropriate development

11. National policy on development in the Green Belt is set out in the National Planning Policy Framework (NPPF). The breach of planning control has two elements; a material change in the use of land and the erection of two buildings. Paragraph 149 of the NPPF states that the erection of buildings in the Green Belt is inappropriate development but there are exceptions including 'limited infilling in villages'. Paragraph 150 states that other forms of development, including material changes in the use of land, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land in it. The Appellant's Agent maintains that whether the development on the land is limited infilling in a village is also relevant to the material change in the use of the land. However, national policy is clear; the erection of buildings is subject to policy in paragraph 149 policy and the material change of use of land is subject to policy in paragraph 150 policy.

12. South Gloucestershire Local Plan: Core Strategy (CS) policy CS5 states that small scale infill development may be permitted within the settlement boundaries of villages. But the CS predates the NPPF which does not restrict a village to being that defined in a Local Plan by a settlement boundary. Furthermore, and this is agreed between the main parties and is set out in the Statement of Common Ground, whether a proposal constitutes limited infilling in a village, and this has been established by recent case law, is for the judgement of the decision maker having regard to matters on the ground and in consideration of the size of the buildings, their relationship to neighbouring development, and the wider area.

13. The Council has accepted, as set out in the relevant delegated report, that the development on the land is limited. The appeal site, furthermore, and notwithstanding its width, has development both to the east and west and is therefore an infill site. Development on the site is, as a matter of planning judgement, 'limited infilling'. The main parties disagree on whether the site is in the village of Winterbourne Down or not. The Council maintains, with regard to this question, that "The relationship can best be assessed and understood through looking at aerial views of the land". This would only be true if the local bird population were providing the assessment. The 'relationship' can only be assessed on the ground by, in this case, an Inspector exercising his planning judgement.

14. On the north side of Down Road at its junction with Badminton Road, part of the A432, is an area of dense commercial development. Continuing along the road, on the same side, there is a public house with a large car park and outdoor seating areas, then Damsons Court and Greystones, then the appeal site, then the

driveway entrance to Bourne End. Beyond that entrance is a paddock before a bridge over the River Frome. On the south side of Down Road, opposite the aforementioned public house and Greystones, there are detached dwellings set in landscaped grounds and this dispersed form of development continues up to relatively dense development alongside and to the east of the river. Further to the west, beyond the river is the main core of the village.

15. Turning off Badminton Road to proceed along Down Road there is a distinct impression that a significant area of development is being entered. Dispersed development to the south, glimpsed through roadside vegetation, complements dense development that extends for a considerable distance along the north side of the road. The core of the village on higher ground can also be glimpsed in the distance and the feeling of being within the village is not dispelled when the paddock on the north side of the road comes into view. The impression is that this is an open green space within the village. The same impression is obtained when leaving the core of the village towards Badminton Road. It can therefore be concluded, as a matter of planning judgement and taking into account all that is seen on the ground, that the appeal site is within the village.

16. Built development at The Oaks constitutes limited infilling in a village and is not therefore, with regard to paragraph 149 of the NPPF, inappropriate development. If the enforcement notice alleged only operational development of the same scale as that which has occurred on the land then, following this conclusion, the appeals would succeed and planning permission would be granted without the need to consider whether very special circumstances exist.

17. With regard to paragraph 150 of the NPPF, openness has two elements; spatial and visual. It is not possible to conclude anything other than the two static caravans, given their physical dimensions, have an effect on spatial openness. But the effect is limited. It is, however, possible to conclude that the caravans, given that they are located to the rear of the site and that they do not cause any harm other than potentially by reason of inappropriateness, do not have any effect on visual openness. The Council contend that the static caravans offend the third purpose of including land in the Green Belt; to assist in safeguarding the countryside from encroachment. But it has been concluded that the development of the site is limited infilling in a village and the appeal site is not, either practically or visually, part of the countryside. The introduction of static caravans onto the appeal site does not offend the third purpose of including land in the Green Belt.

18. The unauthorised change of use of the appeal site resulting from the introduction of two static caravans is inappropriate development in the Green Belt, but only because they have an effect on spatial openness, and this effect is limited. Nevertheless, inappropriate development is, by definition, harmful to the Green Belt and should not, as stated in paragraph 147 of the NPPF, be approved except in very special circumstances.

The second issue – very special circumstances

19. In 1994 Mr and Mrs Jenkins purchased Woodlands Manor, nearby to the appeal site, and after works of refurbishment it was opened as a nursing home. Mrs Jenkins was involved with the management of the nursing home business, which employed 29 staff, whilst Mr Jenkins continued with his building and property management business, which included the Damsons Court development. The nursing home was extended to have 40 bedrooms in the early 1990s and in about

2014 a planning application was submitted to increase the number of bedrooms to about 60. That application was granted and the permission was implemented.

20. Three weeks before the enlarged nursing home was to reopen administrators of the bank who had provided finance for the project entered the property and instructed works to cease. They foreclosed on the loan and took possession of the property in November 2018. This all came as a complete surprise to Mr and Mrs Jenkins because they had had no contact with the bank; all contact had been with their Accountants but that firm had not informed them of any financial problems or difficulties. Not only did Mr and Mrs Turner lose the nursing home but, to pay off creditors, they also lost Greystones and the Damsons Court development.

21. Mr and Mrs Turner were left destitute with no money and nowhere to live. In desperation they turned to Mrs Turner's parents who paid for the purchase of the two static caravans and these were installed at The Oaks, the ownership of which is in the name of Mr and Mrs Jenkins' youngest son, Sam. Mr and Mrs Jenkins occupy one of the caravans and the other is occupied by Sam when he is on leave from the Royal Marines. This caravan was previously also the home of their older son, Scott, when he was estranged from his partner. The estrangement ended and Scott now lives with his partner and their son in nearby Yate.

22. Sam is estranged from his partner though they have a young child. Sam has custody of the child on alternate weekends from 1000 hours on Saturday to 1600 hours on Sunday and also on other days in the year. He cannot look after the child at his barracks so they stay at The Oaks when they are together. Currently, given his military service, Sam would not be able to be with his child, when he can be, if he did not have a home to return to at The Oaks.

23. The most significant material consideration is the severe effect that financial hardship, resulting from all that has happened since the nursing home was repossessed, has had on Mr Jenkins' health, particularly his mental health. Full details of Mr Jenkins' current mental health do not need to be given in this decision but, suffice to say, severe is probably an inadequate adjective; grave could potentially be used instead. The effect on Mr Jenkins' health has, obviously, had a serious effect on his clearly close family. They have all been subjected to severe anxiety, particularly out of concern for their husband and father.

24. Mrs Jenkins works on a part time basis but Mr Jenkins is unable to. Their income level is very low and they would be unable to afford to rent a residential property in the area. They can afford to live at The Oaks because they do not pay rent. The uncertainty over their residential occupation of the static caravan resulting from the enforcement action taken by the Council contributes to the anxiety felt particularly by Mr and Mrs Jenkins and to the former's mental health.

25. Harm is caused by reason of inappropriateness only because the static caravans on the land are not buildings and then only because they have a limited effect on spatial openness. They do not cause any other harm. Material considerations, in particularly Mr Jenkins' mental health which he has done nothing at all to bring upon himself, as a matter of planning judgement, clearly outweigh the harm caused by reason of inappropriateness such that very special circumstances exist in this case.

Conditions

26. The main parties have agreed five conditions if planning permission is granted. They have been imposed though they have been amended in the interests of clarity and precision and to meet the six tests for conditions set out in the National Planning Practice Guidance. Condition one restricts the use of the land to those whose circumstances justify a grant of planning permission, conditions two and five are in the interests of a satisfactory appearance for the site, condition three prevents the use of the land other than for residential purposes, and condition four is for the avoidance of doubt and in the interests of proper planning.

Conclusion

27. Development at The Oaks causes harm by reason of inappropriateness but that harm is clearly outweighed by material considerations such that very special circumstances exist. There is, for this reason and given that the development causes no other harm, no conflict with the Development Plan. The ground (a) enforcement appeals and the planning appeals thus succeed. Planning permission has therefore been granted, subject to conditions. The ground (f) and (g) appeals do not need to be considered.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr J Sneddon BSc(Hons) MRTPI Senior Director of Tetlow King Planning

Mr D Jenkins Appellant

Mrs L Jenkins Appellant

Mr S Jenkins Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Stockdale BA MA MRTPI Principal Planning Officer

Mr A Thomas MSc Enforcement Officer