



Appeal Decisions

Site visit made on 1 February 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal A: F2360/C/22/3300562

Lynbrook, Dob Lane, Walmer Bridge, Preston, Lancashire PR4 4SU

- 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 Leon Sutton against an enforcement notice issued by South Ribble Borough Council.
 - The enforcement notice was issued on 23 May 2022.
 - The breach of planning control as alleged in the notice is the unauthorised operational development consisting of the erection of an outbuilding in excess of four metres high within the curtilage of the Land forming part of the domestic curtilage of Lynbrook, Dob Lane, Walmer Bridge, Preston, Lancashire PR4 4SU.
 - The requirements of the notice are demolish or dismantle and remove the outbuilding.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/F2360/W/22/3298537

Lynbrook, Dob Lane, Walmer Bridge, Preston, Lancashire PR4 4SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Leon Sutton against the decision of South Ribble Borough Council.
 - The application Ref 07/2022/00185/HOH, dated 7 March 2022, was refused by notice dated 19 April 2022.
 - The development proposed is described on the application form as the erection of an ancillary building for the use and enjoyment of the owners of Lynbrook.
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Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Appeal A on Ground (b)

3. The ground of appeal is that the breach of control alleged in the enforcement notice had not occurred on the date the Notice was served. In order to succeed on this ground it would need to be demonstrated that an outbuilding

as alleged has not been erected on the land. The appellant's main argument under ground (b) is that the building marked on the Notice did not exist in the location shown. Attached to the Enforcement Notice is a Plan entitled "*Red Line Plan To Accompany Enforcement Notice*" which outlines in red the "Land" to which the Notice relates. Therefore there can be no doubt with respect to the "Land" in question at Lynbrook, Dob Lane, Walmer Bridge, Preston Lancashire PR4 4SU. In addition the requirement of the Notice is to "*Demolish or dismantle and remove the outbuilding, (shaded blue on the attached plan), from the Land*".

4. There is no specific requirement for an enforcement notice to include a plan. Regulations require the land to which a notice relates to specify the precise boundaries of the land, whether by reference to a plan or otherwise. The Plan clearly identifies the Land to which the Notice relates. I can see that the outbuilding in question is not in the location shown shaded blue on the Plan, there is no doubt with respect to the outbuilding to which the enforcement notice relates. Furthermore, the inaccuracy of the Plan has not prejudiced the appellant as he has submitted a valid appeal and the evidence accompanying the appeal relates clearly to the outbuilding targeted by the Council. No injustice has been caused by the Plan attached to the Notice.
5. Therefore, the outbuilding had been built as a matter of fact and the appeal on ground (b) cannot succeed.

Appeal A on Ground (c)

6. The ground of appeal is that the matter alleged does not constitute a breach of planning control. It is important to note that the determination of the appeal on ground (c) is based on the outbuilding that was in situ at the time the Enforcement Notice was served. The erection of an outbuilding comprises operational development within the meaning of s55 of the Act, for which s57 indicates, planning permission is required.
7. The appellant does not appear to be arguing specifically that the outbuilding the subject of the Enforcement Notice complies with permitted development requirements, but instead is arguing that the matter could have been addressed by negotiation with the local planning authority to reduce the building in accordance with permitted development requirements pursuant to Class E (buildings etc incidental to the enjoyment of a dwellinghouse) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).
8. In any case, the plans submitted show that the outbuilding the subject of the Notice was more than 4 metres in height and therefore exceeds the permitted development tolerances for a dual pitched roof structure. Therefore, irrespective of any proposed or implemented alterations made to the building, the appeal on ground (c) does not succeed.

Appeal B

9. The main issues are:

(i) Whether the development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and the development plan;

(ii) The effect of the development on the openness of the Green Belt, and the character and appearance of the surrounding area; and

(iii) If the development is inappropriate development, whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify it.

Whether Inappropriate Development and Openness

10. The appeal relates to a large, detached outbuilding constructed of metal clad external walls with a profile metal sheet roof and polycarbonate roof lights. The building in question is no longer on site but has subsequently been altered. This is a rather unusual situation but the approach I have taken is based on the application to effectively retain the building that had unlawfully been built on the site intended to be used for purposes described as ancillary for the use and enjoyment of the owners of Lynbrook.
11. It is situated to the rear of Lynbrook, adjacent to some other detached buildings, a hard surfaced yard area and open fields. There are some other houses and buildings in the locality, but the surrounding area is predominantly rural, characterised by open fields, mature hedgerows and trees.
12. Part 13 of the National Planning Policy Framework (the Framework) provides guidance on the types of development that are not inappropriate in the Green Belt and the circumstances in which they may be found to be acceptable. Paragraph 137 highlights that the Government attaches great importance to Green Belts and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within the Green Belt permanently open. Paragraph 147 of the Framework goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm arising, is clearly outweighed by other considerations.
13. Policy G1 of the South Ribble Borough Council Local Plan (2012-2026) 2015 (the LP) is broadly consistent with the Framework and states that within the Green Belt planning permission will not be given, except in very special circumstances, for the construction of new buildings unless it meets certain exceptions.
14. In this case the only exception which could potentially be supported by policy and guidance is that the development is limited infilling or complete redevelopment of previously developed sites, whether redundant or in continuing use, which do not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development.
15. It is my understanding that there were cattery buildings on the appeal site which have now been demolished. There remains little evidence about the size of those buildings or to demonstrate the size, scale or extent of those buildings. The appellant has argued that those buildings measured approximately 54 square metres. As these buildings have been demolished, they cannot be considered to form any part of the baseline assessment of the

impact of the current proposal on openness. In any case, the footprint of the outbuilding is far in excess of the appellant's stated size of the cattery buildings.

16. Views of the development from the surrounding land are partly screened by mature trees and other landscaping in the area, but the form, bulk, massing and scale of the outbuilding would be visible from Lynbrook and elsewhere within the appeal site and therefore it can clearly be seen that there is now development where previously none existed. Therefore, the openness of the Green Belt has been reduced. In the context of the Framework and the LP the harm to the openness of the Green Belt attracts substantial weight.

Character and appearance

17. Policy G17 of the LP relates to the design of new development, stating that among other factors, new development should be of a high quality and provide an interesting visual environment which respects the character of the area. The proposed building would be particularly large for the rural setting. Its height, scale, massing and overall appearance would be industrial rather than domestic or agricultural. The materials used are insensitive and poorly conceived for this location.
18. Although it would be partially screened by some existing landscaping, it would nonetheless be visible in the immediate surroundings. There is little evidence that the proposed building has been designed to respect its mainly rural surroundings or the respect the local environment in which it is situated. Its appearance would be more industrial than would be normally expected to be found in this location and as such it is at odds with and visually dominates its setting and is harmful to the character and appearance of the area. Therefore, it conflicts with policy G17 of the LP.

Other Considerations

19. The appellant states that a number of considerations may combine to amount to very special circumstances and agrees that very special circumstances need to be demonstrated to outweigh the harm caused by the inappropriateness of the development. He also identifies that benefits may be assessed under the strands of economic, social and environmental sustainability, but falls short of demonstrating what those very special circumstances actually are. I have taken account of the different strands of the appellant's case, including the permitted development considerations and the need to provide storage for equipment and machinery used to maintain the property, but do not find that other considerations amount to very special circumstances sufficient to outweigh the harm caused by the inappropriateness of the development in the Green Belt.

Conclusion

20. I have identified that the proposal would be inappropriate development in the Green Belt as defined by the Framework which establishes that substantial weight should be given to any harm to the Green Belt. In addition, the proposal would also reduce the openness of the Green Belt and be harmful to the character and appearance of the area. Any other considerations reviewed above do not clearly outweigh the harm that the proposal would cause. Consequently, there are not any very special circumstances that are necessary

to justify inappropriate development in the Green Belt. As a result, the development fails to accord with Policy G1 of the LP and the Framework which seeks to protect Green Belt land.

21. The appeal scheme would therefore conflict with the development plan and there are no material considerations worthy of sufficient weight, including the approach of the Framework, which would indicate a decision otherwise in accordance with it. As such, the appeal is dismissed.

Appeal A on Ground (f)

22. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve that purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice the subject of this appeal requires the removal of the outbuilding, the purpose is clearly to remedy the breach. Leaving any part of it in place would not achieve that purpose. In this respect the appeal on ground (f) cannot succeed.
23. My attention has been drawn to permitted development rights under Class E of Part 1, Schedule 2 of the GPDO and the appellant states that he planned to dismantle and erect an outbuilding that conforms with the provisions of Class E. It is also argued that the matter could have been addressed by negotiating a reduction in the height of the building to accord with the restrictions under Class E. However, the GPDO does not grant retrospective planning permission. Therefore, because the original outbuilding did not benefit from permitted development rights when it was constructed any replacement building would only have permission by virtue of permitted development rights granted pursuant to the GPDO after the Enforcement Notice is complied with in full.
24. It is not for me to determine on ground (f) whether the outbuilding now on site benefits from permitted development rights, nor is it for me to modify the Enforcement Notice to require the original building to be modified to meet the requirements set out in Class E. However, as has been established by the courts¹ that does not mean to say that permitted development rights have been removed and should the appellant so wish he may implement such rights. Nor does this decision prevent the appellant from submitting an application to the Council for a lawful development certificate for any existing or proposed development, including modifying the outbuilding or erecting an outbuilding elsewhere.
25. In this regard, the appeal on ground (f) does not succeed.

Appeal A on ground (g)

26. The ground of appeal is that the time given to comply with the requirements is too short. The three months given would be sufficient to demolish or dismantle and remove the outbuilding from the land. The appellant has stated that 28 days to remove the structure is unreasonable in the current circumstances. It is not clear why a 28 day period has been identified, but in any case the three month period given is sufficient. The appeal on ground (g) fails.

¹ Mansi v Elstree RDC [1964] 16 P&CR 154

Formal decisions

Appeal A

27. The appeal is dismissed and the enforcement notice upheld.

Appeal B

28. The appeal is dismissed.

A A Phillips

INSPECTOR