



Appeal Decisions

Site visit made on 31 May 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23RD JUNE 2023

Appeal A Ref: APP/X0360/X/22/3292548

Kingswood House, Tag Lane, Wargrave, Wokingham RG10 9ST

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr C Martin against the decision of Wokingham Borough Council.
 - The application ref 213846, dated 23 November 2021, was refused by notice dated 11 January 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the proposed construction of a hardstanding between an existing gate and the house.
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Appeal B Ref: APP/X0360/W/22/3292546

Kingswood House, Tag Lane, Wargrave, Wokingham RG10 9ST

- 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 C Martin against the decision of Wokingham Borough Council.
 - The application Ref 211824, dated 25 May 2021, was refused by notice dated 12 August 2021.
 - The development proposed is formation of a new access drive from Blakes Road following stopping up of the existing access from Tag Lane and erection of entrance gates and piers.
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Decisions

1. Appeals A & B-The appeals are dismissed.

Appeal A

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, the proposal is granted planning permission by Article 3, Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

3. Kingswood House is a substantial detached dwelling stood in extensive grounds. A range of freestanding outbuildings are situated adjacent to a courtyard to the south and west of the dwelling. There is a tennis court not far from the dwelling, on the opposite side to the outbuildings. Vehicle access to the dwelling is principally via a private drive leading from Tag Lane to the east.

4. The proposal involves constructing a private drive around 190 m long and about 3 m wide. The drive would run from the courtyard close to the dwelling, northwards opposite the tennis court across land up to an existing gated entrance onto Blakes Road. During my visit, I observed that the route of the drive forms part of an expansive area of land stretching from the dwelling up to Blakes Road. A large part of this area is maintained as neatly mown grass and is not enclosed or otherwise physically separate from the dwelling. An avenue of maturing trees aligned with the dwelling runs through the middle, whilst belts of maturing trees are adjacent to the boundaries.
5. Constructing the drive is an engineering or other operation, falling within the definition of development at s55 (1) of the Act. The effect of the Act at s57 (1) is that planning permission is required for the carrying out of any development of land. The GPDO at Article 3, Schedule 2, Part 1 grants planning permission for certain development within the curtilage of a dwelling. This includes in Class F at paragraph F (a) the provision within the curtilage of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such.
6. To be part of the curtilage, land should serve a dwelling in some necessary or useful way, even though it need not be marked off or enclosed. It should form an intimate association with the dwelling and form one enclosure with it or be so regarded by the law. The notion of smallness is not inherent in a curtilage, particularly in relation to a large dwelling, but it will normally comprise the area attached to and containing the dwelling and its outbuildings. Physical layout, ownership past and present and use and function, past and present are considerations. The Government's Technical Guidance¹, which aids interpretation of the GPDO, advises that *'the curtilage is land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.'* Whether land falls within the curtilage of a dwelling is therefore a matter of fact and degree.
7. The appellant supplied a photograph of the land between the dwelling and Blakes Road. I am given to understand that this came from a sales brochure produced in 1995. The image shows what seems to me to be an expansive field stretching from Blakes Road towards the dwelling. The field is largely laid to rough grass apart from a small knot of trees. The dwelling is in the background. A fence and mature planting physically separate the field from the area more immediately around the dwelling. The fence and planting coincide with a boundary line shown on an extract from an Ordnance Survey (OS) map also supplied. Even if the land in question were owned with the dwelling by that date, there is little in the photograph that would differentiate it in terms of appearance and function from land in agricultural use.
8. Furthermore, the majority of the land in the foreground of the 1995 photograph is outside of the area more immediately around the dwelling, including the outbuildings and tennis court, marked by bold black lines on location plans submitted with planning applications dating from 2000 for works within the curtilage of the dwelling². The position of these black lines corresponds to the alignment of the fence and mature planting shown in the 1995 photograph and the boundary shown on the OS map. This evidence

¹ Permitted development rights for householders: technical guidance MHCLG September 2019.

² Council Refs: F/2000/0626 & FP/2000/0703.

suggests that in 2000, most of the drive route was not regarded as being within the curtilage of the dwelling. Consequently, none of the above evidence shows that, at the date of the application, the drive would have been on land which forms part and parcel with the dwelling, serving its purpose in some necessary or useful way.

9. The appellant supplied another photograph of the land in question, this time from the direction of the dwelling towards Blakes Road. I am given to understand that the image came from another sales brochure, produced around September 2002. By that date, the land exhibited more of a resemblance to its current appearance. The avenue of trees has been planted in the middle, the grass is neatly mown and there appears to be little physical separation from the area more immediately around the dwelling. This is not dissimilar to what is shown in aerial photographs including the dwelling and its grounds, purporting to date from June 2009 and February 2021, also supplied.
10. However, little evidence was supplied concerning the nature of the relationship between the land and the dwelling. Mowing the grass and planting trees are not conclusive of a functional relationship. Moreover, even if a material change of use had occurred at some stage and the land is in use for purposes incidental to the dwelling that does not necessarily mean it would be part of the curtilage. Land can form part of the same residential planning unit but be outside the curtilage. In any event, if the curtilage and planning unit were to coincide rights under the GPDO would still not have applied at the application date having regard to Article 3 (5)(b), as the available evidence is silent regarding the lawfulness of the residential use of the land up to Blakes Road.
11. The appellant also referred to an LDC granted in 2013 for constructing a drive at a property nearby³. Whilst I was able to view that drive during my visit, since few details were supplied little comparison can be made with the appeal scheme. In any event, the proposal falls to be determined on the basis of its individual facts.
12. The Council accepted that a portion of the drive immediately to the north of the courtyard is highly likely to fall within what they regarded as part of the curtilage of the dwelling. Following my own assessment, I concur. However, since the submitted drawings show the drive as a whole there would be insufficient clarity over the extent of an LDC were I to issue a split decision.
13. Therefore, on the basis of the available evidence and as a matter of fact and degree, I am not persuaded that, at the application date, the drive would have been wholly within the curtilage of the dwelling. Accordingly, on the balance of probability the appellant has been unable to show that the drive is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class F and the proposal would not be lawful for planning purposes.

³ Council Ref: CLP/2013/0546.

Appeal B

Main Issues

14. The dwelling is located within the Metropolitan Green Belt. Therefore, the main issues in this appeal are:
- Whether the proposal would amount to inappropriate development, having regard to the effect on the openness and purposes of the Green Belt, the National Planning Policy Framework (the Framework) and the Development Plan.
 - The effect on the character and appearance of the surrounding countryside.
 - Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify granting permission for the proposal.

Reasons

Whether inappropriate development

15. The dwelling is located in an area of countryside generally made up of occasional tracts of woodland between wider expanses of open farmland, with isolated pockets of residential development. The proposal involves constructing a drive between the dwelling and the Blakes Road entrance, similar in terms of its length, width and alignment to that in Appeal A. Decorative railed entrance gates, masonry piers and railed fencing would be erected at the Blakes Road entrance to replace a field gate and a post and wire fence. The Tag Lane entrance would be stopped up and a substantial section of the drive removed.
16. At paragraph 150, the Framework advises that engineering operations are not inappropriate development in the Green Belt where they preserve its openness and there is no conflict with the purposes of including land within it. According to the Framework at paragraph 137, openness is an essential characteristic of the Green Belt. As Policy CP12 of the Wokingham Borough Core Strategy (CS) pre-dates and is not entirely consistent with the Framework, I shall afford the latter greater weight.
17. The Government's Planning Policy Guidance advises that openness is capable of having spatial and visual aspects, with other matters that may require taking into account including the duration of the development and activity such as traffic. When assessing whether a change has a greater impact on openness, the correct approach is to consider the impact or harm, if any, wrought by the change. The impact of a development on openness is not necessarily related to its size but also its purpose. Therefore, forms of development that are not inappropriate in the Green Belt have little bearing in terms of the effect of the proposal on openness.
18. The drive would adjoin land which is largely either laid to grass or contains mature tree planting. I understand that the drive would not project above the existing ground surface level. Even so, constructing the drive would lead to the hard surfacing of a lengthy strip of land. Although the drive would follow the route of an existing agricultural track for around half its length the track is

unmade, being surfaced with grass or bare earth. The drive would be over double the length, albeit considerably narrower, than the portion of existing drive to be removed. The drive would therefore permanently alter a considerable extent of currently vegetated and naturally topped open land to a manufactured and hard surfaced finish; this would be the case whether the drive is tarmacked or covered over with stones or gravel. Consequently, constructing the drive would entail a moderate erosion of openness in spatial terms.

19. Paragraph 149 of the Framework advises that a replacement building is not inappropriate development where, amongst other things, it is not materially larger than the building being replaced. At around 2.5 m in overall height, the gates, fencing and piers would be significantly taller than the existing low field gate and fence fronting Blakes Road. The angular profiles and solid qualities of the piers together with the ornate design of the railings would give the replacement structure a substantial visual presence in the surroundings and would create an appreciable sense of enclosure along this part of the Blakes Road frontage. The foregoing would contrast markedly with the low profile, muted finishes and overall unassuming appearance of the existing gate and fence. As a result, the replacement structure would be materially larger than the existing built feature. This aspect of the proposal would also entail a slight reduction in openness in a spatial sense, as land currently open apart from the existing insubstantial gate and fence would be covered by and adjacent to a significantly larger, more assertive built feature. Whilst the appellant suggested that the details of the replacement structure could be changed, I have to determine the appeal on the basis of what is before me.
20. Furthermore, when taken together the drive and the replacement structure would moderately erode the perception of openness in the locality. Currently, the dense maturing planting edging roadside verges, significant separation between accesses and glimpsed built forms provide this part of Blakes Road with an appreciably rural feel. Together with the hard surfaced drive extending back from the carriageway, the replacement structure would create a substantial fabricated, hard-edged feature along part of the Blakes Road frontage. This would contrast unfavourably with the roadside planting and would give a significant part of the frontage a more built-up appearance. The Tag Lane entrance is largely viewed in the context of well-tended garden planting, closely mown verges, gated and walled accesses and residential buildings. As a result, removing the existing entrance structures and planting across this entrance would not appreciably offset the adverse effects on openness identified above. Undertaking further planting in the grounds of the dwelling is also unlikely to offset those adverse effects. The drive would also entail a significant increase in activity over the land arising from the movement of vehicles associated with the use of the dwelling.
21. Consequently, the proposal would amount to inappropriate development, failing to preserve Green Belt openness, spatially and visually. In addition, the increase in activity together with the visual attributes of the proposal would involve encroachment into the countryside, in conflict with one of the purposes of including land within the Green Belt at paragraph 138 of the Framework. This does not accord with Policy TB01 of the Wokingham Managing Development Delivery Local Plan (LP). Paragraph 147 of the Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I attach

substantial weight to the totality of the harm to the Green Belt, in line with the Framework at paragraph 148. Other CS policies referred to by the Council do not directly concern development in the Green Belt.

Character and appearance of the surrounding countryside

22. The density and general continuity of maturing planting edging the highway and the fragmented pattern of residential development, with considerable separation between more built-up frontages, contributes significantly to a secluded, sylvan feel along this part of Blakes Road. This contributes significantly to the remote, undeveloped rural character and appearance of the surrounding countryside. The Council's Landscape Character Area Assessment (LCA) ascribes similar visual qualities to the landscape character area in which the dwelling is located⁴.
23. The lengthy strip of hard surfaced drive stretching back from the edge of the carriageway, together with its solid, regular finished surface and more geometric lines would create a sense of formality that differs appreciably from the visual qualities of the setting identified above. Also, having regard to its design, materials, overall length, height and angular profiles, the replacement structure would be viewed as a tall, principally residential built feature. This would all pay little regard to and be markedly at odds with the softer contours, more naturalistic shapes and muted colour tones evident in the rural surroundings. As a result, the proposal would appear as an alien feature, contributing to a significantly more built-up feel in the environs.
24. Stopping up the Tags Lane entrance would not offset the adverse visual impacts of the proposal. Additional planting would not have an adequately softening effect on either the drive or the replacement structure. Without further details of the circumstances in which other vehicular entrances in the surrounding area originated it is difficult to make comparisons with the proposal. In any event, some of those examples illustrate the harmful visual effects of such development.
25. Therefore, the proposal would significantly and harmfully erode the character and appearance of the surrounding countryside and would not properly reflect the LCA strategy for the landscape character area of conserving the rural setting. As the proposal does not achieve a high-quality design appropriate in terms of scale, layout and materials without detriment to the landscape, there is failure to accord with criteria in CS Policy CP3. There is no failure to accord with LP Policy CC03, given that existing trees could be safeguarded. Even so, by not demonstrating how the LCA requirements have been addressed and not retaining the condition, character and features that contribute to the landscape, the proposal fails to accord with LP Policy TB21. Also, for the above reasons the proposal has taken insufficient account of and is inconsistent with the Council's Borough Design Guide Supplementary Planning Document, which aims to enhance the quality of development and ensure high quality design. Additionally, by not conserving and enhancing the natural environment the proposal is inconsistent with the Framework.

⁴ H1: Wargrave-Twyford Arable Chalk Lowland.

Other considerations

26. There would be a modest benefit to highway safety from an increase in visibility at the Blakes Road entrance and from stopping up the Tag Lane entrance, which is substandard in one direction due to the presence of a mature hedge and a narrow verge. This weighs slightly in favour of the proposal.
27. As most of the drive would not benefit from the planning permission granted by the GPDO at Article 3, Schedule 2, Part 1, Class F, there is no realistic fall-back position in that respect. Future repairs to the existing track are also highly unlikely to have adverse effects similar to those identified above. Since an LDC is not the equivalent of planning permission, the drive at a nearby property referred to in Appeal A has little bearing on whether permission should be granted for the proposal.
28. The proposal would introduce a more formal approach to the dwelling, towards an attractive elevation. Even so, it is not unusual for a substantial dwelling set in extensive grounds, as in this instance, to have such an elevation orientated away from the main vehicular access. In any event, given the density of maturing planting between the dwelling and Blakes Road, there would be little perceptible increase in legibility. Therefore, I afford this matter limited weight. The absence of objections from interested parties is a neutral factor which neither weighs in favour nor against granting permission.

Planning Balance

29. The proposal would amount to inappropriate development in the Green Belt, harming openness and conflicting with one of its purposes. There would also be unacceptable harm to the character and appearance of the surrounding countryside. The other considerations, including the modest benefit in highway safety terms, do not clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify granting permission for the proposal do not exist.

Conclusions

30. Appeal A-For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed construction of a hardstanding between an existing gate and the house was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195 (3) of the 1990 Act as amended.
31. Appeal B-The proposal does not accord with the Development Plan and is inconsistent with the Framework. Therefore, I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR