



Appeal Decisions

Site visit made on 17 May 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 JULY 2023

Appeal A Ref: APP/K3605/W/22/3307959

Lian Yard, Giraffe House, Redhill Road, Cobham KT11 1EG

- 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 Challenge Fencing Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2022/0242, dated 26 January 2022, was refused by notice dated 2 September 2022.
 - The development proposed is described as 'new fence and gates'.
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Appeal B Ref: APP/K3605/W/22/3307956

Lian Yard, Giraffe House, Redhill Road, COBHAM, KT11 1EG

- 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 Alex Stewart Clark of Challenge Fencing Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2021/4343, dated 17 December 2021, was refused by notice dated 2 September 2022.
 - The development proposed is described as 'partial retention of existing hardstanding to be used in connection with the existing Giraffe Building'.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. As set out above there are 2 appeals on this site. While I have considered each proposal on its own merits, in order to avoid duplication, I have dealt with the 2 schemes together, except where otherwise indicated.
4. The appeal site has a long and complicated planning history. I have had regard to the evidence provided with respect of this history, in so far as it relates to the development proposals subject of these appeals.
5. The application forms indicate that the developments have been commenced but not completed. From my observations on site, I cannot be certain that the works undertaken are in accordance with the submitted plans, and as such both appeals are dealt with as schemes for proposed development.

6. A lawful development certificate was granted under 2013/2131. The effect of which was to confirm the lawfulness of the use of buildings and some limited external areas within the appeal site for uses within the former Classes B1 and B8.
7. At the time of making the applications subject of these appeals, the appellant confirmed that the site was vacant. This correlates with my own observations during my site visit.
8. An amended site plan has been submitted by the appellant in connection with appeal B. The details within the amended plan differ from the plans upon which the application subject of this appeal was determined. Annex M.1. of the Procedural Guide – Planning Appeals – England advises that if an applicant thinks that amending their proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh application. Annex M.1.2 of the same guide further advises that if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Appeal B has therefore been determined based on the plans submitted in support of the application and upon which the Council's decision was made. I have had regard to the Wheatcroft¹ principles and the degree of engagement for all parties, in coming to this view.

Main Issues

9. The main issues are;

for appeal A;

- whether the proposals are inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- the effect of the development on the openness of the Green Belt;

for appeal B;

- whether the proposals are inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;

and for appeals A and B;

- the effect of the development on the character and appearance of the area; and,
- if the proposals are found to be inappropriate development, whether the harm by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the developments.

Reasons

Policy and site context

10. The appeal site occupies land in a countryside location between the A3 road and a series of buildings at Brambley Hedge Farm. It is within the Green Belt, the broad extent of which is defined in Policy DM17 of the Elmbridge Borough Council Elmbridge Local Plan Development Management Plan 2015 (the Local Plan). The policy seeks to prevent urban sprawl and to keep land within its

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

designation permanently open. It further indicates that inappropriate development will not be approved unless very special circumstances are demonstrated that would clearly outweigh the harm.

11. The 5 purposes of the Green Belt are set out within paragraph 138 of the Framework. One of these purposes – as identified within paragraph 138 c - is to safeguard the countryside from encroachment.
12. Paragraph 147 of the Framework guides that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Framework paragraph 149 indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt unless one of a number of exceptions are met. Paragraph 150 of the same document says that certain other forms of development - which include engineering operations - are also not inappropriate in areas subject of Green Belt designation, provided they preserve its openness and do not conflict with the purposes of including land within it. Policy DM17 of the Local Plan broadly conforms with the provisions of the Framework in respect of Green Belt.

Whether the development is inappropriate in the Green Belt – Appeal A

13. The development proposals subject of appeal A are for the construction of a fence and gates. For the purposes of the Act, Section 336 of The Town and Country Planning Act 1990, defines buildings as 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'. Consequently, the proposed boundary fence and gates are structures that would comprise buildings, as opposed to engineering operations. Therefore, the engineering operations exception at 150(b) of the Framework would not apply. Nor, can I conclude that any of the other exceptions within paragraphs 149 or 150 of the Framework would apply in the consideration of this appeal.
14. The development subject of this appeal would therefore represent inappropriate development in the Green Belt, which is, by definition, harmful. Accordingly, the proposed development should not be approved except where very special circumstances exist. Consequently, and in respect of this main issue, the development would conflict with Policy DM17 of the Local Plan, and the associated policies of the Framework.
15. The evidence indicates that a fence and gateways have been removed from the land close to the site frontage with Redhill Road. Given that Policy DM18 of the Local Plan relates to proposals for the development of existing buildings in the Green Belt, this policy is not determinative in appeal A.

Openness – Appeal A

16. Openness can be considered both spatially and visually. In a spatial sense, the implementation of the development proposal would result in the introduction of development in areas of undeveloped countryside close to Redhill Road. Views of much of the development from locations along this road would be obscured by a relatively thick band of tree and shrub planting between the road and the fence. Furthermore, the gates and fencing would be of a mesh-type construction that can be clearly seen through. However, the gateways and the sections of fencing closest to the gates would still be clearly visible by users of the road when passing either of the vehicular accesses to the site. The proposal

would therefore reduce the openness of the Green Belt, and conflict with one of the purposes of such areas, as identified at paragraph 138 c) of the Framework. Substantial weight is attributed to this harm.

Whether the development is inappropriate in the Green Belt - Appeal B

17. In the context of appeal B, both main parties agree that the development proposals constitute engineering operations and that paragraph 150. b) of the Framework is therefore relevant. I have no reason to find otherwise. The effect of the development on the openness and purposes of the Green Belt will therefore determine whether the development is inappropriate or not.
18. The development subject of this appeal would extend into areas of land within the site that have not been demonstrated to have been previously lawfully developed. Although roadside trees and shrubs would provide an effective visual screen of the additional hardstanding from locations within Redhill Road, this would not be the case from locations within the road that are close to either of the vehicular accesses into the site. This, and the future use of those additional areas of hardstanding - for either the parking and/or manoeuvring of vehicles or, for the external storage of goods or materials associated with the authorised use of the building within the site, - would spatially and visually erode the openness of the Green Belt. The proposals would therefore reduce the openness of the Green Belt.
19. Overall, I conclude that the development would reduce openness and would conflict with a purpose of the Green Belt, as set out within paragraph 138 c) of the Framework. Consequently, the proposal would represent inappropriate development in the Green Belt, which would conflict with the requirements of Policy DM17 of the Local Plan and the relevant parts of the Framework. Substantial weight is accorded to the harm which would be caused to the Green Belt. Accordingly, the proposal should not be approved except where very special circumstances exist.

Character and appearance

20. A building known as Giraffe House; areas of hardstanding; fencing and gateways; and significant areas of grassland were found within the irregularly shaped appeal site during my site visit. Notwithstanding the nearby dwelling; riding stables; and other commercial premises, and although a snapshot in time, during my mid-morning and mid-week site visit, I found Redhill Road to be lightly trafficked close to the appeal site. This, and the tree and shrub growth, both alongside Redhill Road close to the site and bordering large parts of the site, are distinctive features which contribute to the pleasant and semi-rural character of the appeal site and its setting.
21. Excepting locations within the public realm close to the points of access to the appeal site, the thick and tall band of tree and shrub growth that exists adjacent to Redhill Road obscure much of the appeal site from view from public vantages along Redhill Road. The proposed development would be mainly located to the rear of this soft landscaping feature, which is proposed to be retained. The proposed fence and gates subject of appeal A would be constructed using dark green mesh panels, which would afford them a subtlety that would harmonise well with the surrounding plant growth. Occupying a relatively level site, and being largely screened from view from the public realm, the proposed hardstanding subject of appeal B would not be atypical of

other areas of hardstanding serving nearby commercial properties. Nor would it be of a layout; appearance; or scale, which would be visually prominent and harmful to the character and appearance of the area. The proposals would thereby preserve the distinctive features which contribute to the established character and appearance of the area.

22. For the reasons given, the proposed developments would not be harmful to the character and appearance of the area. Consequently, and in respect of this main issue, they would comply with the requirements of Policies DM2 of the Local Plan and CS17 of the Elmbridge Borough Council Elmbridge Core Strategy dated 2011 (the Core Strategy). These policies require new development to be of a high quality which preserves or enhances the character of the area; responds to the positive features of individual locations and integrates sensitively with the locally distinctive landscape. Also in respect of this main issue, the proposed developments would comply with the Elmbridge Design and Character Supplementary Planning Document dated 2012 (the SPD) - which seeks to secure the delivery of distinctive high-quality development across the Borough, that respects local character, as well as the parts of the Framework that aim to achieve well-designed places.

Other considerations

23. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the [listed] building or its setting, or any features of special architectural or historic interest that it possesses. Paragraph 199 of the Framework guides that when considering the impact of a proposed development on the significance of a designated heritage asset - in this case, the Grade II listed Foxwarren Cottage, which is located on the opposite side of Redhill Road from the appeal site - great weight should be given to the asset's conservation.
24. The significance of Foxwarren Cottage is its historic fabric, which comprises an estate cottage in Jacobethan style. The setting of the listed building is informed by both Redhill Road and the woodland that are either adjacent to or surrounding it. Located on the opposite side of Redhill Road, and largely obscured by existing tree and shrub growth, the proposed developments would preserve the setting of the heritage asset and would not cause harm to the significance of the heritage asset or its setting. That being the case, the requirements of paragraphs 200 and 201 of the Framework are not engaged. I accord neutral weight to this consideration.
25. With regard to appeal A, I accept that a well-secured site can help to deter criminal activity, which may include fly-tipping and third-party occupation. Furthermore, the proposals would undoubtedly help to prevent unrestricted public access; dog walking; and dog fouling within the site. Notwithstanding this, I have been presented with no cogent evidence demonstrating previous criminal activity or antisocial behaviour within the site. As such, only limited weight can be attributed to these benefits.
26. I do not doubt that there is demand within the area for well-secured commercial sites which are available to rent. I also agree that the letting of the site would be likely to bring benefits to the economy and result in employment generation. However, given that large parts of the appeal site do not benefit from lawful commercial, business, distribution or storage uses, the need for fencing, gates and hardstanding of the amount, design, and locations

- proposed, has not been adequately demonstrated. The weight that can be attributed to these economic and security-based benefits is therefore limited.
27. There are other properties within the area that have means of enclosure and hardstandings either on the road boundary or set behind trees and hedging. The development proposals would not, therefore, be atypical in these respects. However, given that one of the purposes of the Green Belt is to assist in safeguarding the countryside from encroachment, only limited weight can be afforded to this consideration.
28. The development subject of appeal B would result in a decrease in the total areas of existing concrete within the site. However, insufficient evidence has been provided from which to conclude that there would be a net reduction in the amount of authorised hardstanding within the site as a result of the implementation of the development proposals, and to which beneficial weight could be attributed.
29. Also with regard to appeal B, and in the absence of an occupier of the building and authorised hardstanding areas, I am not persuaded that the provision of additional hard surfaces within the curtilage of the building would constitute permitted development, authorised by Schedule 2 Part 7 Class J of the Town and Country Planning (General Permitted Development) (England) Order – 2015 as amended. I do not, therefore, accord this consideration weight.
30. My attention has been drawn to a number of appeal decisions, which relate to sites within different Council areas from that of the appeal site. Although I have not been provided with full details of these cases, in the case of Beeston Fields Golf Club appeal, the appellant advises that the site was not within the Green Belt. Nor, is it clear from the evidence that the 20 Highfield Lane decision related to a site within the Green Belt. Furthermore, the main issue in this latter appeal was the effect of the development on the living conditions of the occupiers of a neighbouring property, which is different from the main issues subject of these appeals. In the 3 linked appeals against enforcement notices relating to land at Archies stables, it was found that the harm that would be caused to the character and appearance of the area could be mitigated over time. However, also in these appeals significant weight was afforded to the immediate and identified future need for traveller sites in the Borough. No such argument has been advanced in these cases. For the reasons provided, none of the cited appeals are directly comparable with the scheme subject of this appeal, and they are not therefore accorded more than limited weight.
31. A planting plan has been provided which includes proposals for areas of wildflower planting; new native hedgerows; tree planting; and remedial works to existing hedgerows. Such proposals would add to the ecological and biodiversity value of the site. However, given the limited scale of the schemes, I can attribute these benefits only moderate weight.
32. I accept that historically larger areas of the appeal site, than the buildings and hardstandings previously deemed to be lawful, have been used for commercial purposes. However, on the evidence before me, the historic uses of the wider site have been abandoned, and therefore the weight that can be attributed to any such uses is limited.
33. The retention of the existing areas of hardstanding within the site would reduce the energy requirements associated with the breaking up, removal and

processing of the unauthorised concrete. However, had the unauthorised surfacing not been laid, there would be no need for its removal. Very limited weight is therefore attributed to these benefits.

Conclusion

34. The developments subject of these appeals would harm openness and conflict with one of the purposes of including land within the Green Belt. They would therefore represent inappropriate development in the Green Belt, to which I give substantial weight.
35. Although I have found that the developments would not be harmful to the character and appearance of the area, this is a neutral consideration. The other considerations in these cases do not clearly outweigh the harm by reason of inappropriateness and any other harm that I have identified. Consequently, the very special circumstances necessary to justify the developments do not exist.
36. Overall, and for the reasons given above, the proposals conflict with the development plan when taken as a whole. There are no material considerations, either individually or in combination that outweigh the identified harm and associated development plan conflict. Therefore, I conclude that both appeal A and appeal B should be dismissed.

V Simpson

INSPECTOR