



Appeal Decisions

Site visit made on 26 June 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th July 2023

Hever Hotel, Hever Road, Hever, Kent TN8 7NP

Appeal A Ref: APP/G2245/C/22/3311370

- 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 R Popely (Hever Spa and Wellbeing Ltd) against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice, numbered 19/00229/OPDEV, was issued on 24 October 2022.
 - The breach of planning control as alleged in the notice is the erection of a single storey extension (as showed edged in blue in the approximate location on Plan B).
 - The requirements of the notice are:
 - 1) Demolish the single storey extension (as showed edged in blue in the approximate location on Plan B)
 - 2) Remove all resultant material from the site.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) 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.
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Appeal B Ref: APP/G2245/W/22/3311325

- 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 Jim Goodwin (Hever Spa and Wellbeing Ltd) against the decision of Sevenoaks District Council.
 - The application Ref 22/01566/FUL, dated 6 June 2022, was refused by notice dated 13 October 2022.
 - The development proposed is a single storey extension for ancillary store room at rear of function room.
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Appeal C Ref: APP/G2245/C/22/3293890

- 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 Hever Spa and Wellbeing Ltd against an enforcement notice issued by Sevenoaks District Council.
- The enforcement notice, numbered 19/00377/OPDEV, was issued on 23 February 2022.
- The breach of planning control as alleged in the notice is the erection of six outbuildings (as shown in the position edged with a blue line on the attached Plan B).
- The requirements of the notice are:
 - 1) Cease using the six outbuildings
 - 2) Demolish the six outbuildings and remove all resultant material from the site.
- The period for compliance with the requirements is 3 months.

- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) 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.
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Decisions

Appeal A

1. It is directed that the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed

Appeal C

3. It is directed that the enforcement notice is varied by: by the deletion of 3 months and the substitution of 6 months as the period for compliance.
4. Subject to the variation, the enforcement notice is upheld.

Background and preliminary matters

5. The above headings for Appeal A and Appeal C, reflect different names for the appellants, than that shown on the submitted appeal forms. The appellant has however confirmed that the appellant for all three appeals is Hever Spa and Wellbeing Ltd. I shall proceed on this basis.
6. As set out above there are three appeals on this site. Appeal A and Appeal B relate to the same development, the erection of a single storey extension. Appeal C relates to a different development on the same site, namely the erection of six outbuildings. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
7. The appeal site for all three appeals is located to the eastern side of Hever Road and a short distance from Hever Castle. It forms part of a larger complex that includes Hever Golf Club, with access to both sites through the main entrance on Hever Road. There are a number of buildings on the appeal site, including a reception, bedrooms and a leisure complex.
8. At the time of the site visit, the hotel was closed, but understood to be in use for short term lettings. The Council have since clarified that the site has planning permission for C1 as a hotel.

Main Issues for the appeals

9. It is common ground that the appeal site lies within the Metropolitan Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 137 of the revised National Planning Policy Framework (the Framework) makes clear that openness and permanence are the essential characteristics of the Green Belt.

10. I have considered the reasons for issuing the notice, or refusing the applications for all three appeals. On this basis I consider that the main issues are:

- Whether the development amounts to inappropriate development.
- The effect of the development on the openness of the Green Belt and the purposes of including land within it; and
- Whether the harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the grant of planning permission.

Reasons

Appeals A and B

Ground (d)

11. An appeal on this ground seeks to demonstrate that on the balance of probability, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters, (i.e. the matters alleged in the notice). This ground of appeal assumes that there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four year period laid down by s171B for operational development. The burden of proof lies on the appellant.
12. In the case of operational development, the building must be substantially completed for four years prior to the issue of the notice. It is the appellant's case that the development was substantially completed in August 2018 and thus more than 4 years before the notice was issued.
13. The Council's own evidence is inconclusive, although they inspected the premises in March 2019, March 2022, May 2022, June 2022 and August 2022, I have not been provided with officer reports or photographs to demonstrate what the position was at each visit. It is clear however, from the related appeal decision (APP/G2245/W/19/3236757) that the extension subject to that appeal, was complete at the time of the Inspectors site visit on 7 January 2020.
14. It is a feature of the appellant's evidence that there are no supporting documents, personal statements, or sworn supporting affidavits for this intervening period. Moreover, I have been provided with no evidence to suggest that attempts have been made to secure supporting evidence or contact parties who have personal knowledge of the site, or why this has not been possible.
15. For the above reasons, I consider that very limited evidence has been submitted in support of the appellant's case, and their assertions are far from being precise and unambiguous. Consequently, I find that the appellant's evidence is not sufficient to demonstrate, on the balance of probabilities, that the subject extension has been substantially completed for the necessary period. While the Council has not provided evidence to contradict the submissions, the appellants evidence falls short of discharging the burden of proof. The appeal on ground (d) therefore fails.

Ground (a) and s78

Whether development is inappropriate

16. The Framework's policy aims have been summarised above. Planning Policy Guidance states that openness is capable of having both spatial and visual aspects, in other words, the visual impact of the proposal can be relevant, as could its volume.
17. It is the appellant's case that the site should be considered as Previously Developed Land (PDL) and the development should not be considered as being inappropriate, by virtue of the specified exemptions set out in paragraph 149 (g) of the Framework. In summary this exemption refers to limited infilling, or the partial or complete redevelopment of previously developed land, whether redundant, or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
18. My attention has been drawn to the previous Inspectors decision that related to a slightly larger extension. The Framework does not define limited infilling, although to my mind, it generally means the filling of a modest gap in otherwise built development. That is not the case here. The extension is some 5m by 9.5m and rather than filling a gap, it further extends the building towards the southern boundary. Consequently, I am satisfied that the development does not represent limited infilling.
19. Openness is capable of having both spatial and visual aspects. In keeping with the previous Inspectors findings, this albeit smaller extension, still increases the size of the already substantially extended building, which was at the time, considered to be disproportionate, requiring very special circumstances for it to be found acceptable.
20. I accept that it is unlikely to result in a greater degree of activity or traffic generation. However, from my observations, the extension is visible from within the site and whilst there are intervening trees, it is clearly visible from Hever Road, albeit against the backdrop of other development. Moreover, it is of substantial construction with sound foundations and I have nothing to suggest that it is not intended to be permanent. Accordingly in my judgement, it has a limited, but nonetheless greater and material, impact on the openness of the Green Belt than existed previously.
21. Overall and for the above reasons, I find that the extension does not represent limited infilling and has a greater impact on openness, both in visual and spatial terms, than previously existed. Accordingly, it does not benefit from the above exception and represents inappropriate development. Paragraph 147 of the Framework, states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In accordance with Paragraph 148, I attach substantial weight to that harm. The development therefore conflicts with policies GB8 of the Allocations and Development Management Plan (2015) (ADMP) and policy LO8 of the Sevenoaks District Council Local Development Framework Core Strategy (2011) (CS). These policies seek to ensure that development does not materially harm the openness of the Green Belt, whilst supporting the maintenance and diversity of the rural economy.

22. As I have already found above that the development is inappropriate development, it is necessary to go on to consider whether there are any other considerations to be weighed against the identified harm to the Green Belt.

Other considerations and Green Belt balance

23. I acknowledge that the Framework states that significant weight should be placed on the need to support economic growth and local employment, in particular in rural areas. The appellant submits that the upkeep of the Listed Buildings, and the maintenance of the site are also benefits of the development. However, no additional employment opportunities would result from the extension, although it is submitted that it would support the continuation of the business on the site.
24. At the time of my site visit the Hotel business had ceased, due to the COVID-19 pandemic and whilst undefined legal issues are being resolved. From the evidence before me, the main extension is currently in use for storage connected to the SPA and gym use that is continuing and a short-term residential use that is also taking place.
25. However, there is no clear evidence that the short-term letting activity is lawful. Moreover, I have no timescale if or when the Hotel use will recommence, or why the existing buildings cannot be used for storage purposes in the meantime. Accordingly, I give limited weight to the factors put forward in support of the appeal.
26. Overall, I consider that the substantial weight to be given to the Green Belt harm I have identified, is not clearly outweighed either individually, or cumulatively, by other considerations, sufficient to demonstrate the very special circumstances that are necessary to justify the development exist. The development is therefore in conflict with the Framework.

Ground (g)

27. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 2 months is too short. The appellant has suggested that an alternative timescale of 6 months to comply with the full requirements of the notice would be more reasonable.
28. The development must be considered in the context of the identified harm to the Green Belt. Moreover, the time for compliance refers to the time required to undertake the works, in this case the removal of the extension and resultant debris. The required works do not involve any complex building operations.
29. Accordingly, I consider that a period of 2 months is a reasonable timescale for the requirements of the notice to be complied with. The appeal on ground (g) therefore fails.

Appeal C

Ground (a) and the deemed application

Whether development is inappropriate

30. The six timber outbuildings have been sited to the north of the site, adjacent to the Anne Boleyn Building which is in use as a gym. A tennis court and an area of parking is sited nearby. The six separate buildings are clustered around a

small courtyard. At the time of the site visit they were used to offer individual treatment rooms.

31. Due to the difficulties the business experienced during and following the pandemic, the Anne Boleyn building has been sublet and now operates as a gym, including personal training and access to various therapists.
32. It is the appellant's case that these buildings have also been constructed on PDL and represent infilling in accordance with paragraph 149 (g) of the Framework. I have already set out my findings in relation to the extension above (Appeals A and B) and shall apply the same considerations to this development.
33. From my observations and in common with my considerations above, to my mind the buildings do not represent the filling of a gap in existing development. Rather the cumulative scale of these six individual buildings, extend the built development significantly further towards the northern boundary of the site.
34. At the time of the visit, the buildings were largely screened from views from Hever Road due to vegetation and intervening trees that were in full leaf. I also accept that the land slopes towards the northern boundary and the buildings are, to some extent screened by the existing building. Nonetheless, they are clearly visible from within the site, by those using the various facilities offered within this extensive complex.
35. Consequently, for the above reasons, I find that the development does not represent limited infilling and has a greater, albeit modest, impact on openness than previously existed. Accordingly, I find that it does not benefit from the above exception and represents inappropriate development in the Green Belt. The development is therefore in conflict with Policy LO8 of the CS.

Other considerations and Green Belt balance

36. It is submitted in support of the appeal that the buildings are used by a variety of local businesses, that offer a range of beauty treatments to clients and employing staff to provide these services. The importance of supporting local business is accepted. However, in common with the Appeals A and B above, I have no evidence before me to demonstrate why these services could not be provided within the existing buildings, or why further development in the Green Belt is necessary. For these reasons I give those matters put forward in support of the appeal moderate weight.
37. However, to be weighed against these benefits, is the substantial weight attributed to the harm to the Green Belt, and the modest harm I have found to openness. Overall, in my judgement the considerations in favour of the development, do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the other identified harm, so as to comprise the very special circumstances necessary. I therefore find that a grant of permanent permission is not justified.

Ground (g)

38. The time for compliance with the notice is three months. From the evidence, the treatment rooms are being sublet to a number of small local businesses. I have no details about the circumstances or financial position of any of these businesses. Nevertheless, it is reasonable to conclude that if I dismiss this

appeal, they will need to relocate their business. This may be to alternative accommodation within the site, or they may need to secure alternative premises to continue to operate. Either way time will be needed to make the necessary arrangements.

39. I therefore find that it is reasonable to extend the time for compliance to 6 months to allow for alternative arrangements to be secured. I shall therefore vary the requirements of the notice to 6 months and the appeal on ground (g) succeeds to this extent.

Other matters

40. I have considered whether a temporary grant of planning permission would be appropriate. Planning Policy Guidance makes clear that a temporary condition is only likely to be appropriate in certain circumstances, including where a trial run is needed to assess the effect of the development on an area, or it is expected that the planning circumstances will have changed in a particular way by the end of the temporary period.
41. However, in the context of the harm to the Green Belt and in light of the ongoing uncertainty that remains over the future and nature of the business. I do not consider that a temporary grant of permission would be justified in this instance.

Conclusions

Appeal A

42. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

43. For the above reasons I conclude that the appeal should be dismissed.

Appeal C

44. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Hilary Orr

INSPECTOR