



Appeal Decisions

Site visit made on 26 September 2023

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal A Ref: APP/G2245/C/22/3292905

Appeal B Ref: APP/G2245/C/22/3292906

Appeal C Ref: APP/G2245/C/22/3292907

Appeal D Ref: APP/G2245/C/22/3292908

Land adjacent to Hale Oak Barn, Hale Oak Farm & Breechers Barn, Hale Oak Road, Sevenoaks Weald, Kent, TN14 6NQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr David Turner (Appeal A) Mrs Cathryn Turner (Appeal B), Mr Russell Jackson (Appeal C) and Mrs Lucinda Jackson (Appeal D) against an enforcement notice issued by Sevenoaks District Council.
 - The notice was issued on 19 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission:
 - 1) Creation of a vehicular track (as shown hatched in blue on attached Plan B);
 - 2) Change of use of land from agriculture to residential (as shown hatched in green on attached Plan B).
 - The requirements of the notice are 1. Remove the access track as shown hatched in blue on plan B attached to the enforcement notice and return the land back to grass land and agricultural use, 2. Return the land as shown hatched in green on the Plan B back to agricultural use, 3. reinstate the pre-existing track as shown hatched in orange on plan C attached to the enforcement notice.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (e), (f), (g) of the Town and Country Planning Act 1990 as amended. Since appeals have 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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1. It is directed that the enforcement notice is corrected in allegation 2 by deleting 'from agriculture'. The appeal succeeds to a limited extent under ground (f) and requirement 2 shall be varied to read 'return the land as shown hatched green on plan B attached to the enforcement notice back to agricultural use (not including removal of the new hedge)'.
2. Subject to this correction and variation, all appeals are allowed insofar as they relate to the track, where planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the creation of a vehicular track (as shown hatched in blue on attached Plan B to the enforcement notice).
3. All the appeals are dismissed and the enforcement notice upheld as corrected and varied insofar as it relates to the residential use of land, 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 in respect of change of use of land from agriculture to residential (as shown hatched in green on Plan B attached to the enforcement notice).

Preliminary Matters

4. Currently it appears that the track as altered and the original track are in mixed use, serving both the residential properties adjacent and the agricultural land beyond. Therefore, to allow for this situation allegation 2 should not refer to change from agricultural use alone. An enforcement notice allegation does not need to identify the previous use. I shall therefore correct allegation 2 to 'Change of use of land to residential (as shown hatched in green on the attached plan B)'. I do not consider that this change has any effect in relation to natural justice or the appeal itself.

Reasons

Ground (e)

5. The Council has acknowledged that there was a spelling mistake made, but has also confirmed that the notice was served on Hale Oak Homes Ltd at the business address in Redhill. The appeal under ground (e) fails.

Ground (b)

6. The appellants believe the allegation is misleading in describing the development as formation of a vehicular track, as this implies a new track. The original track was altered during construction for construction purposes and then maintained thereafter as they say it provided better, safer access. However, the enforcement notice is clear in identifying the various sections of track that have been changed/are new. The allegation does not make reference to impact, just the creation of a new track. This clearly is the case, so the appeal on ground (b) fails.

Ground (a)

7. The development plan includes the Sevenoaks Core Strategy [CS] and the Sevenoaks Allocations and Development Management Plan [ADM]. The National Planning Policy Framework is also relevant [NPPF].
8. CS Policy LO8 relates to the countryside and rural areas. It notes that the Green Belt will be maintained and that the countryside will be conserved and distinctive features that contribute to the special character of its landscape and biodiversity will be protected and enhanced where possible. The AONB will also be conserved and enhanced.
9. ADM Policy EN1 aims for high quality design and requires the layout of the development to respect the topography and character of the site and surrounding area. Proposals should not result in loss of open spaces or green infrastructure that would have an unacceptable impact on the character of the area.
10. ADM Policy EN5 notes that Areas of Outstanding Natural Beauty and their settings will be given the highest status of protection in relation to landscape and scenic beauty. Proposals will be permitted where the form, scale, materials and design would conserve and enhance the character of the landscape.
11. NPPS paragraph 138c indicates that one of the five purposes of the Green Belt is to assist in safeguarding the countryside from encroachment.

12. The Council's SPD, which carries moderate weight, notes garden or curtilage extensions in the Green Belt to be inappropriate development which will not be permitted.

13. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and development plan policy.
- The effect on the openness of the Green Belt.
- The effect on the character and appearance of the area.
- If the development is inappropriate in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Inappropriate Development & Openness of the Green Belt

14. The NPPF notes certain forms of development are not inappropriate development in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land in the Green Belt. Changes of use for garden/residential use extensions are not identified, but in any case, this would conflict with one of the purposes of the Green Belt, that of assisting in safeguarding the countryside from encroachment. I conclude that this would be inappropriate development in the Green Belt.

15. The previous mainly open agricultural land has been subsumed into gardens and new boundary structures formed. The boundaries themselves have some impact on openness. Use and domestic paraphernalia also have some impact on openness, but this was already occurring on the old track and the difference in position is very small. In addition, movement of agricultural vehicles would be a normal use in the countryside.

16. I acknowledge that the change to the drive is an engineering operation, that may be acceptable in the Green Belt, but harm to openness and the purposes of including land in it remains relevant. The old track is already incorporated into the countryside, and the new parts of the track would only be a little further into the agricultural land and would not be additional encroachment. The track is a mixed agricultural and residential use. The agricultural use is normal for the countryside and would not harm openness. Movement of residential vehicles along the new parts of the track could have a minor effect on openness, but I do not consider the small change in the position of the residential use of the track would have any material impact on openness and this would not result in any increase in movements. I therefore find that the track would not affect openness and is not inappropriate development.

17. Overall, I consider the residential use has had an impact on the openness of the Green Belt and it has encroached into the countryside, but that the track has not harmed openness or encroached into the countryside.

Character and Appearance

18. Beyond the residences is a very attractive agricultural landscape. The site is also at the edge of the AONB, for which great weight should be attached to any

planning harm to it. The land is assessed as having good to moderate agricultural land value which is the second-best category of six. I note the previous presence of a building on a small part of this land, but that was removed some time ago and I consider, looking at photographs, that the land had been reintegrated into its surroundings. The increase in garden size and use clearly has an effect on the character and appearance of the land enclosed with a more formal, manicured and artificial appearance through use as part of the garden area and land of good agricultural value is lost.

19. In terms of the AONB I do not consider that this is major development and as this is at the edge of the AONB the impact on it and its setting is limited, but it does not conserve or enhance the setting of the AONB. I conclude the use of 'green' identified residential land does not accord with policies identified above.
20. The track was already in the countryside, so its use and activity will not change. It has moved a relatively small amount, but I do not consider this would materially affect the impact it has on the surrounding countryside and the AONB is conserved. The layout and design of the track respects topography and the character of the site and surrounding area and it does not result in loss of open spaces or green infrastructure that would have an unacceptable impact on the character of the area. I conclude the track accords with the policies identified above.

Very Special Circumstances related to residential use of 'green' land.

21. The appellant refers to policy LO1, which focuses development on urban areas. I accept that does not prevent development elsewhere and note that the Council has not included this policy in the refusal. However, other policies in the plan are to be accorded with and it notes development will only take place where it is compatible with policies protecting the Green Belt.
22. I note that traditionally and today, agricultural uses and farmsteads often evolve, with changes to routes over the land. However, agricultural uses are appropriate for the countryside and Green Belt, and changes to enable and improve that use are usually acceptable. That is not the case here with the change to the green hatched land as this is a change of the green hatched land to residential use.
23. The appellants say that the land where the new length of track is now was previously a barn that has now been demolished and a photograph from the 1960s is provided. They say the remaining rubble after demolition made it unsuitable for agricultural use. The photograph shows the barn close to the original track, so it is likely that only a small part of it was on the new length of track. In any case, the barn was clearly removed a long time ago. I attach no weight to the presence of the previous barn.
24. I consider that the change of use of the land to residential garden would have little benefit in relation to biodiversity. The formation of the new hedge by the access track would have some benefit in relation to this, but I also note that a hedge by the first group of buildings shown in the aerial photograph was removed.
25. I conclude that the harm by reason of inappropriateness, and other harm, is not clearly outweighed by the other considerations identified, so as to amount

to the very special circumstances necessary to justify the residential use of 'green' land.

Ground (f)

26. The appellant is arguing that the track should remain along with the hedge for its ecological value. I have concluded the track has no additional impact and should receive planning permission. I accept the hedge has some biodiversity value and is beside the track and could be replanted without the need for planning permission, therefore I consider it would be excessive to require this to be removed. So for clarity the requirement is varied to reflect this. The appeal on ground (f) succeeds to this limited extent.

Ground (g)

27. I have granted planning permission for the track, so ceasing the residential use of the green land requires no significant time, so the appeal on ground (g) fails.

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INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/G2245/C/22/3292905	Mr David Turner
Appeal B	APP/G2245/C/22/3292906	Mrs Cathryn Turner
Appeal C	APP/G2245/C/22/3292907	Mr Russell Jackson
Appeal D	APP/G2245/C/22/3292908	Mrs Lucinda Jackson