



Appeal Decision

Site visit made on 8 November 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal Ref: APP/T0355/C/23/3315118

Plot 2 Pound Meadow, Temple Lane, Bisham, SL7 1SA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Chris Stonell against an enforcement notice issued by Royal Borough of Windsor and Maidenhead.
 - The notice was issued on 23 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission:
 - a) Erection of a means of enclosure comprising fencing and gates;
 - b) Erection of a building.
 - The requirements of the notice are to
 - a) Demolish the building identified on the plan in the approx. position marked with a blue outline
 - b) Remove all materials from the land following compliance with step (a)
 - c) Take down and remove all fencing and gates, and associated footings, shown on the plan marked with a green line;
 - d) Re-instate the hedgerow on the south east facing boundary (adjacent to Temple Lane) following compliance with step (c) by planting a mix of Hawthorn (*rataegus monogyna*) Field maple (*Acer campestre*), Blackthorne (*Prunus spinosa*). The plants shall be planted out at 6 plants per linear metre in a double staggered row and keeping the line of the existing hedgerow.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (the Act) 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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Decision

1. It is directed that the enforcement notice is varied by:
 - i) deleting requirement d) of the notice in full and replacing it with "Restore the land on the south east boundary adjacent to Temple Lane to its condition before the breach took place."
2. Subject to the variation, the appeal is dismissed, 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.

Preliminary Matters

3. The Council made a Direction under Article 4 of the Town and Country Planning General Permitted Development (England) Order (as amended)(the GPDO) on 4 May 1990 which removed permitted development rights for various classes of development including Class A Part 2 of the GPDO. The erection of gates, fences, walls and other means of enclosure at the appeal site after 4 May 1990 therefore require express planning permission.
4. Since the appeal was made, a revised National Planning Policy Framework (the Framework) has been published in December 2023. Although paragraph

numbers which relate to Green Belt have changed, the document has not raised any new matters which are determinative to this appeal.

5. The signage at the appeal site refers to No 3 whereas the Council refers to Plot 2 Pound Meadow in the notice. However, the Council has confirmed that the plot number used is the original plot number and the plan correctly identifies the appeal site and the fencing.

The Notice

6. Irrespective of the grounds of appeal, the Inspector has a duty to put the notice in order. The requirements should flow from the allegation. The final requirement provides for the reinstatement of the hedgerow along the boundary with Temple Lane with specific details of types of species to be planted, distances between rows of planting and keeping the line of the existing hedgerow. However, Section 173(3) of the Act sets out the purposes of the notice which includes restoring the land to its condition before the breach took place. The requirements cannot seek to make improvements to what existed before the breach took place when the statutory wording refers only to restoration.
7. There is no evidence before me that there was a hedgerow with the three specific types of planting in a double staggered row along the whole of the front of the appeal site boundary with Temple Lane. For similar reasons, amending the wording to a species of planting of my choice as suggested by the Council is not within the provisions of Section 173(3).
8. I will therefore delete requirement d) in full and replace it with "restore the land on the south east boundary adjacent to Temple Lane to its condition before the breach took place" which accords with Section 173(3) of the Act. I will amend the notice accordingly.

The appeal under ground (a) and the deemed planning application

Main Issues

9. The appellant is not seeking planning permission for the building referred to in the notice which has now been removed. The ground (a) appeal is therefore limited to a request for planning permission for the fencing and gates to the front of the appeal site and the fencing to the sides (the development). The main issues are therefore:
 - whether the development constitutes inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the area,
 - the effect of the development on protected trees
 - The effect of the development on flood risk
 - whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

10. Pound Meadow is an open pasture and water meadow with protected species which lies between the River Thames and Temple Lane which has been divided into individual plots. The individual plots are largely undeveloped although various fence treatments are visible on the frontage with Temple Lane.
11. The appellant has erected a solid boundary wooden boundary treatment along the front of the appeal site with fencing and inserts of a double gate for vehicular access towards the middle and a single door for pedestrian access to one side. There is also stock proof style fencing along part of the two sides of the appeal site.

Whether inappropriate development in the Green Belt

12. The Framework identifies that the fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. It also states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Policy QP5 of the Borough Local Plan 2013-2033 (the Local Plan) seeks to protect Green Belt and is consistent with the Framework.
13. Paragraph 154¹ of the Framework states that in the Green Belt apart from limited exceptions, the construction of new buildings is inappropriate development. Fencing and gates fall within the statutory definition of a building as it includes structures. The listed exceptions in Paragraph 154 do not include fences and gates. Consequently the erection of the fencing and gates is inappropriate development within the Green Belt.

Openness

14. The Framework indicates that openness is an essential characteristic of the Green Belt. Openness has both a spatial as well as a visual aspect. Prior to the fencing and gates to the front of the appeal site being erected, there appeared to be some hedging and a metal type fence. The solid wooden fencing together with the gates to the front of the appeal site introduces development of a substantial built form in terms of both height and length where such development did not previously exist. The presence of the fencing to the front in a prominent location does erode and harm openness to a moderate degree.
15. Although the side fencing has less visual impact than the solid boundary treatment to the front of the site, the addition of side fencing still has spatial impact and results in harm to openness albeit less than moderate harm. The addition of built development at the appeal site also fails to safeguard the countryside from encroachment which is one of the purposes of the Green Belt identified in the Framework.
16. The development is therefore inappropriate development in the Green Belt for the purposes of Policy QP5 of the Local Plan and the Framework. There is also a reduction in openness and conflict with one of the purposes of including land within the Green Belt contrary to paragraphs 142 and 143² of the Framework.

¹ Previously Paragraph 149

² Previously Paragraphs 137 and 138

Character and Appearance

The front boundary

17. The appeal site is within an area of special landscape importance and within the setting of the River Thames. The site is used by the appellant and his family for leisure purposes to enjoy the meadow location and views of the River Thames. To the opposite side of Temple Lane, there are views of open countryside which reinforce the rural and open character of the area with a border of mature hedgerows and trees.
18. The development to the front of the appeal site is extensive and the solid wooden fencing and gates are out of keeping with the rural landscape in introducing domestic style fencing to the appeal site. The appellant has provided photographs of the front fencing and gates to the two plots between the appeal site and the Marlow Sailing Club and also fencing to the plots to the other side of the appeal site. I have no details of when those fences were erected and whether or not they have express planning permission.
19. The Council has taken enforcement action against another plot on Temple Lane and has provided a copy of that appeal decision ³although the removal of fencing was not in dispute in that decision. Whilst other fences and gates do From my site visit observations, the other boundary treatments are not comparable to the appeal site in terms of scale and extent. In any event, the existence of other development does not justify allowing further harm.
20. For the reasons given, I do find that the development to the front of the appeal site does harm the character and appearance of the area. It is therefore in conflict with Policy QP3 of the Local Plan which refers to respecting and enhancing the local and natural character of the environment. It is also in conflict with Policy QP4 of the Local Plan which provides that the special character and setting of the River Thames will be conserved and enhanced.

The side boundaries

21. The Council has not commented upon the character or nature of the stock fencing to the sides of the appeal site which consist of wires and wooden posts. The side fencing is less prominent than the front boundary treatment due to its design and location within Pound Meadow and parts of the side fencing are obscured by hedging and trees. The side fencing is unlikely to be visible from the River Thames and is not visible from Temple Lane. I therefore do not find that the side fencing fails to respect the surrounding landscape and water frontage.
22. For the reasons given, I do find that the side fencing does not harm the character and appearance of the area. It is therefore not in conflict with Policies QP3 which refers to respecting and enhancing the local and natural character of the environment. The side fencing is also not in conflict with QP4 of the Local Plan which provides that the special character and setting of the River Thames will be conserved and enhanced.

³ APP/T0355/C/20/3258519

Trees

23. The Council made a Tree Preservation Order (TPO) on the 4 June 1990 in respect of Pound Meadow which includes the appeal site. It is not clear if the TPO is intended to be a group or area order and the Council has not identified any specific protected trees which have been harmed as a result of the development. The notice states that the erection of the front boundary treatment will have caused harm to trees and may have severed roots. The Council refers to a new access being created which has removed part of the established hedgerow including some trees subject to the TPO but the Council is not alleging the formation of an access⁴. The appellant and a third party refer to the Environment Agency previously using the site for access with HGV vehicles and that the hedgerow was previously destroyed and temporary fencing was erected. Whether or not there has been a breach of the Hedgerow Regulations is a separate matter for the Council to resolve outside of this appeal.
24. On the evidence before me, I do not find that the development has caused harm to trees. In this respect the development is therefore not in conflict with Policy NR3 of the Local Plan which amongst other things refers to protecting trees.

Flooding

25. The appeal site is located in Flood Zone 3 where development is at the highest risk of flooding and photographs provided show the extent of the flooding that has occurred in the past. In the absence of a flood risk assessment, there is no evidence to show how the development's location and design addresses the risk of flooding. The development is therefore in conflict with Policy NR1 of the Local Plan which states that development will only be supported where an appropriate flood risk assessment has been carried out and it has been demonstrated that development is located and designed to ensure that flood risk from all sources is acceptable in planning terms.

Other considerations

26. The appellant has referred to the need to secure the appeal site. He also refers to lack of finances to pay for a new fence and concerns about fly tipping and illegal occupation if the appeal site was exposed. Whilst I appreciate that appellant's concerns and finances there is no evidence before me that alternative options to secure the site have been explored by the appellant with the Council. The Council specifically refers to securing the appeal site in a less intrusive way by the use of chain link fencing with thorny planting similar to the boundary treatment which was in place prior to the erection of the front fencing and gates in its evidence.⁵ I therefore attach limited weight to this matter.
27. The appellant and a third party refer to wildlife returning to occupy the appeal site since the fencing at the front was erected. However, I have no evidence that wildlife would not continue to occupy the appeal site with an alternative boundary treatment. I therefore attached limited weight to this matter.

⁴ Paragraph 41 of the Council statement

⁵ Paragraph 31 of the Council statement

Green Belt Balance

The front boundary

28. I have found that the front boundary treatment is inappropriate development and results in moderate harm to the openness of the Green Belt and is in conflict with one of the purposes of the Green Belt. The Framework establishes that substantial weight should be given to any harm in the Green Belt. In addition, I cannot be satisfied that there is no harm to flood risk arising from the development in the absence of a flood risk assessment and the front boundary treatment also harms the character and appearance of the area.
29. I then have to consider the other considerations which carry weight and whether they outweigh the substantial harm. I have attached limited weight to the need for security and also to the wildlife issue. The absence of harm to trees is a matter of neutral weight. However, these other considerations do not either individually or cumulatively clearly outweigh the harm to the Green Belt that I have identified.

The side boundaries

30. I have also found that the side fencing is inappropriate development and also results in harm to the openness albeit to lesser degree than the front fencing and gates and is in conflict with one of the purposes of the Green Belt. The Framework establishes that substantial weight should be given to any harm in the Green Belt. In addition, I cannot be satisfied that there is no harm to flood risk arising from the side fencing in the absence of a flood risk assessment which is further harm.
31. On the other side of the balance, I have attached limited weight to the need for security and also to the wildlife issue. The absence of harm to trees and to the character and appearance of the area are both matters of neutral weight. Therefore, these other considerations do not either individually or cumulatively clearly outweigh the harm to the Green Belt that I have identified.
32. Consequently, the very special circumstances necessary to justify the development which consists of the front and side boundary treatments do not exist and the development conflicts with the Framework and Policies QP5 and NR1 of the Local Plan.

Other matters

33. The appellant who is not represented has not appealed under ground (g) which relates to the period of compliance. The Council does have powers under Section 173 to extend the period of compliance if it considers that there are bone fide reasons to do so.

Overall conclusion

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

E Griffin

INSPECTOR