



Appeal Decision

Site visit made on 9 January 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Ref: APP/X4725/C/23/3325058

Land at Crossley Street, New Sharlston, Wakefield WF4 1BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Creddy Smith against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 26 May 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised erection of a stable building and the erection of timber and concrete fencing in excess of 1 metre high adjacent to a highway (Crossley Street).
- The requirements of the notice are to:
 - a) Reduce the height of the timber and concrete fencing to no more than 1 metre height above the ground on the boundary of the site fronting the public highway on Crossley Street
 - b) Demolish the unauthorised stable building and remove all demolition materials from the land.
- 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 Act.
- 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.

Summary of Decision: The appeal fails and the enforcement notice is upheld with correction and variation as set out below in the Formal Decision.

The notice

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The wording of the notice refers to 'a stable building'. A previous owner of the site used the building for horses, but both parties agree that the building is no longer used as a stable and have submitted appeal statements on this basis. Therefore, the notice would be more accurate if the word 'stable' was removed. The location of the building is clear from photographs submitted with the appeal but is not indicated on the plan attached to the notice. Specifying that the building is located adjacent to the entrance to the site from the access track, would aid clarity and certainty. In addition, the notice requires the fence to be reduced in height, but the breach could also be remedied by removing the fence. The notice requirements can be varied to add removal of the fence as an option and ensure the resultant materials from all works are removed from the land. I can make these changes without causing injustice, as set out in the formal decision below.

Preliminary matters

2. It has been confirmed in writing that the appellant is called Creedy Smith. Any reference in submissions to Creedy Price is a mistake.
3. A notice relating to the stable building and fencing was served on a previous owner of the land in 2021. That notice was upheld at appeal but the land subsequently changed ownership. The notice subject to this appeal was served on the new owner and has minor differences to the previous notice.
4. In addition to the building and fence subject to this appeal, the site also contains other development, including a 'summerhouse style' building, hardstanding, vehicular access and gate, a blockwork wall adjacent to the access track and sections of steel palisade fence. At the time of my site visit, there were a number of individual wooden dog kennels located around the site, along with several cars and vans, 2 touring caravans, a box trailer and a pile of mixed building materials/scrap. I am informed that the site is being used as a residential Gypsy caravan site. An application seeking permission for this change of use has been submitted, but remains invalid, so the use as a residential Gypsy caravan site is unauthorised. The change of use, as well as the other development and structures, are not the subject of the notice, so do not form part of the considerations under this appeal.
5. The National Planning Policy Framework 2023 (the Framework) does not define 'building'. However, the definition of a building under section 336 of the Act includes "any structure or erection". Case law¹ has established that size, permanence and physical attachment to the ground are important considerations in deciding if something is a building or not. The fence in this case is a substantial length, is solidly attached to the ground and is designed to be permanent. Therefore, I consider the fence to be a building for the purposes of the assessment under this appeal.
6. Policy CS1 of the Wakefield Metropolitan District Council Local Development Framework (LDF) Core Strategy (CS) (April 2009) requires that in the Green Belt, development will conform to national, regional and LDF policies relating to the Green Belt. National planning policy regarding the Green Belt is set out in the Framework and postdates the LDF. It follows that CS1 is in accordance with the Framework. The Framework was updated in late 2023. Green Belt policy within it did not change, but the paragraph reference numbers within Chapter 13 all went up by 5 (eg paragraph 149 has become 154).

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

7. An appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation set out in the notice, as corrected. Hence, planning permission is sought for erection of a building and the erection of timber and concrete fencing in excess of 1 metre high adjacent to a highway.
8. The site to which the deemed planning application relates is within the Green Belt. This is not in dispute. The Framework specifies that development within the Green Belt is inappropriate, with certain specified exceptions and that

¹ Including *Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions* [2000]

inappropriate development is, by definition, harmful to the Green Belt and should not be approved, except in very special circumstances.

Main issues

9. The main issues are:

- Whether the building and fencing is inappropriate development in the Green Belt having regard to the Framework and any relevant LDF policies;
- The effect of the building and fencing on the openness of the Green Belt;
- The effect of the building and fencing on the character and appearance of the area; and
- If the building and fencing is found to be inappropriate development, 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.

Reasons

Whether the development is inappropriate

10. Paragraph 154 of the Framework sets out various exceptions whereby the construction of new buildings is not inappropriate in the Green Belt. Further exceptions are set out in Paragraph 155. I have been provided with no substantive evidence to suggest that the building and fencing can be considered under any of the exceptions. Furthermore, the appellant accepts that the development constitutes inappropriate development in the Green Belt. Therefore, the building and fencing constitute inappropriate development in the Green Belt, in the terms set out in the Framework and Policy CS1 of the LDF.

Effect on openness

11. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. Case law² has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect.
12. I am informed that prior to the erection of the building and fencing, the site was an open and undeveloped field. The site is located within a significant gap between two small settlements. The site is near the edge of New Charlston but separated from it by a section of mature trees and hedges, with the developed section of the site set furthest from the settlement. Between the site and the next settlement of Warmfield is an area of open and undeveloped fields and common land.
13. The building and fencing results in the introduction of built form where there previously was none. The scale and footprint of the building means it has a harmful effect on the spatial aspect of openness. This is despite the building having been reduced in height since its original iteration. Both the building and the fence are highly visible from the road and nearby public paths. The fencing is a harsh and solid built form of considerable height and length, which fronts

² The Court of Appeal in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466.

onto the highway. It seems that prior to the installation of the fence and erection of the building, the site would have been open to the highway, and views would have been possible into and across the site, to the land beyond. Therefore, the fence significantly closes down the visual openness of the site and the surrounding area and this is exacerbated by the presence of the building.

14. The development closes down part of a gap between settlements and extends the built up area of New Charlston towards Warmfield. This conflicts with one of the Green Belt purposes, which is to safeguard the countryside from encroachment.
15. Taken together, the fence and building have a harmful effect on the spatial and visual aspects of openness and fail to comply with one of the purposes of including land within the Green Belt.

Character and appearance

16. New Charlston is characterised by ribbon development of terraced dwellings along Crossley Street and Long Row, with its edge clearly defined by the route of a former railway. A field on the other side of the road to the appeal site, directly adjacent to the settlement, has horses on it and contained some fencing and a building which appeared to serve as stables. I have not been presented with any information on the planning status of this site. Other than this and the appeal site, the rest of the area between New Charlston and Warmfield is fields and common land which has a semi-rural character and appearance, without any buildings or significant fencing.
17. The building is constructed in blockwork at the bottom, with a wooden structure and corrugated sheet walls and roof. Since changes have been made to reduce its height, the building has been poorly finished. It has a ramshackle appearance which does not have the character of a building you might typically expect to see in either an agricultural or residential setting. Although set back from it, the building is highly visible from the road.
18. The fencing is also highly visible from the road, despite being at a slightly lower ground level. It has the form and appearance of a fence commonly used as a garden boundary in urban areas or at commercial and industrial development. A widely spaced row of laurel bushes has been planted along the front of the fencing on highway land. It will take years for them to establish sufficiently to provide any significant screening and currently does little to soften the appearance of the fence.
19. Longer distance views of the development are largely prevented by topography and existing vegetation. Despite this, the building and fence are prominent and incongruous elements within their immediate context. On the basis of the above factors, both the building and the fencing are significantly out of keeping with, and highly detrimental to the semi-rural and undeveloped character and appearance of the area.
20. No additional landscaping has been proposed under this appeal, or any means to secure the retention of the laurel bushes, which are on land outside of the site. Regardless of this, I do not consider that planting could sufficiently mitigate the harm of the development, particularly the harm by reason of inappropriateness and the impact on the spatial element of openness.

21. I conclude that the building and fencing cause unacceptable harm to the character and appearance of the area. Consequently, the development does not comply with Policy D9 of the LDF Development Plan Document (DPD) (April 2009). This seeks to ensure good design and requires that development respects the character of its locality, including in terms of scale, height, density, layout and materials.

Whether very special circumstances exist

22. The building and fencing is inappropriate development in the Green Belt, in the terms set out by the Framework, which by definition, is harmful. The development has a harmful effect on openness and fails to safeguard the countryside from encroachment. However, while the development is visible from public vantage points, the building is a relatively modest size and although the fence exceeds 1m, the height is not excessive. Consequently, I consider the degree of harm to openness and the purposes of including land in the Green Belt caused by the development to be moderate. Notwithstanding this, in accordance with the Framework, I must attach substantial weight to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
23. I am aware of the rights set out under Article 3(1) of the UN Convention on the rights of the child, as well as the requirements of The Children Act 1989 and have taken the best interests of children into consideration, as relevant. I note the matters raised by the appellant regarding the need to safeguard his children, one of whom has additional needs. Notwithstanding this, the residential use of the land is currently unauthorised and does not form part of the matters considered by this appeal. Consequently, I can give only minimal weight to the needs of any individuals, including children, which are related to their residential use of the site.
24. I am unaware of whether the dogs are kept for business purposes or as pets. Either way, the site does not have permission for any business use related to the keeping of dogs and the residential use is unauthorised. Therefore, I can give only minimal weight to any argument related to the need to accommodate dogs at the site.
25. Therefore, these other considerations, taken together, do not clearly outweigh the harm to the Green Belt, and the harm to the character and appearance of the surrounding area. Consequently, the very special circumstances required to justify a grant of planning permission do not exist and the development conflicts with the Framework.

Conclusion on ground (a) and the deemed planning application

26. I conclude that the building and fencing is inappropriate development in the Green Belt and very special circumstances do not exist, meaning the development conflicts with the Framework. The building and fencing also conflict with Policies CS1 of the LDF CS and D9 of the LDF DPD and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. Therefore, the appeal on ground (a) fails and planning permission is refused.

The appeal on ground (g)

27. The appeal on ground (g) is that any time period specified in the notice falls short of what should reasonably be allowed. The appellant states that they would require more than 3 months to obtain alternative accommodation for the 8 dogs kept within the building subject to this appeal and that a lack of suitable alternatives may lead to dogs having to be disposed of.
28. I acknowledge that the appellant may well have been unaware of the unauthorised nature of the building when they purchased the site. Notwithstanding this, during my site visit it was evident that there are a number of small, individual kennels on site which had dogs in them. Although I did not enter the building subject to this appeal, it appeared to be used for storage of wood and I saw no evidence of its use for dogs. I therefore see no reason why alternative arrangements need to be made for dogs before the building is removed. I have been presented with no substantiated reasons why the requirement relating to the fence could not be achieved within 3 months, and this too seems reasonable.
29. Given the harm identified above, it is desirable to address the breach of planning control without undue delay. Consequently, I conclude that the period for compliance with the notice is reasonable and the appeal on ground (g) fails.

Conclusion

30. For the reasons given, I conclude that the appeal on ground (a) and ground (g) should not succeed. I shall uphold the enforcement notice, with correction and 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.

Formal decision

31. It is directed that the enforcement notice be corrected as follows:
- In section 3 (The matters which appear to constitute the breach of planning control), delete the word 'stable'.
32. It is also directed that the enforcement notice be varied as follows:
- In section 5 (What you are required to do), delete the wording in its entirety and substitute the following wording:
 - 'a) Reduce the height to 1m above the ground, or remove in its entirety, the timber and concrete fencing located on the boundary of the site fronting the public highway on Crossley Street;
 - b) Demolish the unauthorised building located adjacent to the entrance to the site from the access track; and
 - c) Remove all materials resulting from compliance with requirements a) and b) from the Land.'
33. Subject to this correction and 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.

H Davies

INSPECTOR