The Planning Inspectorate

Appeal Decisions

Site visit made on 13 February 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal A, Ref: APP/T2215/X/22/3303837
Stables, Wood End Farm, Puddledock Lane, Wilmington, Kent DA2 7QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Peter Crocker against the decision of Dartford Borough Council.
- The application Ref 21/01383/LDC, dated 24 August 2021, was refused by notice dated 28 April 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as "Continued use as self-contained unit for more than four years".

Appeal B, Ref: APP/T2215/C/21/3284456
Land and dwellinghouse, northeast of Puddledock Lane, Wilmington, Kent DA2 7QF

- 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 Peter Crocker against an enforcement notice issued by Dartford Borough Council.
- The enforcement notice was issued on 8 September 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building and its use as a dwelling house in the location outlined in blue and marked with an X on the plan attached to the notice and the material change of use of the land to a mixed-use for residential and equestrian.
- The requirements of the notice are:
  1. cease the use of the building as a dwelling house;
  2. cease the residential use of the land;
  3. disconnect all utilities which service the building, including drainage and septic tank;
  4. demolish the building;
  5. remove from the land all materials arising from the demolition of the building;
  6. remove from the land, fencing marked as a green line on the plan attached to the notice and the hard standing associated with the residential use shown on the plan attached to the notice in the location hatched in green;
  7. reinstate the land to its condition prior to the erection of the building, including by levelling or grading the ground with topsoil and seeding the same to restore a grassed surface.
- The period for compliance with the requirements is set out as follows:
  Cease: 8 months (requirements 1 & 2)
  Disconnect: 8 months (requirement 3)
  Demolish the building: 8 months (requirement 4)
  Remove: 10 months (requirements 5 & 6)
  Reinstate the land: 12 months (requirement 7).

- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

Procedural Matters

3. The address of the site is taken from the application form for Appeal A. However, the building is also known as The Barn as shown on the appellant's response to the Council's Planning Contravention Notice (PCN) and various other documents.

4. At the site visit I was unable to enter the dwelling as the appellant was away. Nevertheless, I was able to see everything I needed to from outside the building and the rest of the site accompanied by the Council's officer and the appellant's agent. I viewed the appeal site from nearby public rights of way (PROW) and the wider area by myself, as agreed with the parties.

5. The appeal on ground (d) in respect of Appeal B was withdrawn on 25 October 2021. I shall therefore take no further action in respect of this aspect of the appeal.

6. I shall deal with Appeal A first because if I find the development is lawful, then there is no need to consider Appeal B.

7. Appeal B was lodged in October 2021 and since then the National Planning Policy Framework (the Framework) applicable at the time was replaced on 20 December 2023. The appeal site lies within the Metropolitan Green Belt but the only changes to the Framework concerning the Green Belt relate to Green Belt boundaries, which is not an issue in this appeal.

8. The Council's development plan framework comprises the Dartford Core Strategy, adopted September 2011 (the CS) and the Dartford Development Policies Plan, adopted July 2017 (the DPP). There is an emerging new local plan but given its stage in the development plan process, it merits less weight than the current adopted documents. No emerging policies have been referred to in the reasons for issuing the notice.

Appeal A

Main Issue and the Time Limits for Enforcement Action

9. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded.

10. Section 191(2) of the Town and Country Planning Act 1990 (the 1990 Act), indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them, for instance, the

time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Lawfulness in this case is to be decided at the time of the application, which is dated 24 August 2021.

11. The Council state the application was submitted on 10 September 2021 and the appellant provides this date on his appeal form as being the date of the application. However, this date may simply have been copied from the Council's decision notice. Under section 191(4) of the 1990 Act the relevant date for ascertaining whether the existing development is lawful is the date of the application. This remains the case even if the parties agree some modification to the description of the development and/or the plans.

12. The Council issued their first enforcement notice (the notice) on 26 August 2021 alleging a material change of use of the land to a mixed use for residential and equestrian and the erection of a building and its use as a dwelling. Due to a typographical error, this notice was withdrawn on 8 September 2021 but was subsequently re-issued on the same date. Whilst the matters are at appeal the second notice is currently, in effect, suspended. As such, subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force in respect of this development.

13. With regard to subsection 191(2)(a), section 171B of the 1990 Act deals with the time limits for enforcement action. This sets out three time periods for three different types of development. The appellant's application is described as "Continued use as self-contained unit for more than four years". His case is predicated on the "four year" rule, namely that the building used for residential purposes was substantially complete four years before the date of the application and the residential use began at least four years before the application date.

14. However, in my view the claimed existing use falls within section 171B(3) "any other breach of planning control", namely that no enforcement action may be taken after the end of the period of 10 years, beginning with the date of the breach. This is because although the appellant describes the building used for residential purposes as a "barn conversion" in his statutory declaration, the rest of the evidence shows it was erected for the purpose of a dwelling from the outset. The appellant states that he owns a reasonably large piece of land "which he considers to be grossly underutilised and sought to erect a dwelling for residential purposes."

15. If a building is erected unlawfully and used as a dwelling from the outset, so there is no change of use of a building as such, as there was no previous use, the time limit for enforcement action is then ten years. This is because the period of immunity is concerned with a material change of use of land on which a building has been constructed to facilitate that use.

16. The operational development of the building itself may still become immune after four years. The development period for consideration in this appeal is therefore ten years for the material change of use of the land to residential and four years for the operational development, which makes the relevant dates 24 August 2011 and 24 August 2017.

Reasons

The appellant's evidence

17. The appellant's evidence comprises:

- Appellant's statutory declaration, attached British Gas energy bills and affidavits from Mrs D E Denman, Ms E Crocker, Ms J M Lockyer and Ms M Wanstall;
- Council Tax bills;
- Walkers Building Merchant invoice and receipt dated 26 April 2017 and Alsford Timber invoices dated 22 June 2017, 22 August 2017 and 25 September 2017; EPD Insulation Delivery Note dated 11 January 2018;
- Lloyds insurance dated 22 February 2018;
- Correspondence from DVLA dated 30 November 2020, 9 November 2021 and 30 November 2021;
- Self-assessment statement dated December 2020;
- Copy of planning permission ref: 16/01617/FUL for the erection of a detached building to provide hay and feed store, dated 15 December 2016 together with officer's report; and
- Photographs of the site and area.

The Council's evidence

18. The Council's evidence comprises:

- Undated photographs and photographs dated 3 November 2020;
- Aerial photographs dated 2017 and 2018; and
- PCN response dated 2 July 2021 and email response dated 22 May 2021;

Assessment

19. The appellant owns a small parcel of land adjacent to Wood End Farm, which is used to keep horses and for grazing. In 1988 he received planning permission to build four stables and a tack room and these were constructed near the access into the site. A few years later he received planning permission for a detached building to be sited near the stables to use as a hay and feed store. This permission was renewed in 1996 and 2016.

20. The appellant's house resembles the hay and feed store building in that it has barn doors and is positioned opposite the stables but it varies in several respects from the approved plans. The dimensions are marginally larger, in that it is 1.4m wider and it is sited 1.8m closer to the road. It has a half hip roof as opposed to a gable roof and additional window and door openings. Inside there is a bathroom on the ground floor with the rest of the space laid out as a kitchen and lounge area with a separate woodwork room. At first floor level there are two bedrooms. It is understood that the appellant is a carpenter/joiner and that he built the dwelling himself, which is clad in timber. The space around the building has been separated from the stable yard and paddocks by post and rail fencing to create a small residential curtilage.

21. None of the appellant's evidence shows that the material change of use of the land to residential took place before 2017. The appellant states in his Council Tax Registration form that he moved into the property in September 2017 and according to the PCN response the building was substantially complete approximately September 2017. The affidavits also state that the use did not begin before 2017.

22. The PCN response states the building was also erected as a barn, for hay and feed storage. However, it appears the only way into the storage room is via the lounge and there is a room over this space so the head height is normal. Photographs from the Council and the appellant show this space is used for woodworking and for storing a motorbike. It is therefore more likely than not that the appellant may have first thought of using the space for hay and feed storage but it became a room used for woodworking. At my site visit I saw the motorbike stored in the lounge area.

23. The majority of the space within the building is laid out and used for residential purposes and I find the woodwork room akin to a home office in terms of the size of the room. The building, as a matter of fact and degree, is therefore a dwelling and the residential use of the land on which the building is sited is unlawful as it has not subsisted for ten years.

24. With regard to the erection of the dwelling, the appellant's evidence begins in March 2017 when he paid for the laying of an underground electricity cable, as shown on the UK Power Networks invoice. Invoices dated April, June, August and September 2017 show the purchase of concrete blocks and various amounts and types of timber. I find, on this evidence alone, that it is unlikely the building was substantially complete by the relevant date of 24 August 2017 when the appellant was still purchasing building materials in September 2017. Furthermore, he only bought the insulation in January 2018. This date is taken from the appellant's Statement of Case as the date on the document is illegible.

25. The Council's aerial photographs show that on 8 April 2017, there was no dwelling on site, which is consistent with the appellant's invoices as he only began purchasing the materials from 26 April 2017. The second aerial photograph is dated 7 May 2018 and shows a building which has a roof with slates and rooflights in place and there is also a septic tank in the paddock. The horse box (in which the appellant states he was living during construction) is parked right next to the dwelling and there is no demarcation of a residential curtilage so it may be that the building on this day was not substantially complete but an aerial photograph cannot show this.

26. The appellant's case is that the building was substantially complete approximately September 2017 however, there are no Building Control records to show that this was the case. Instead, the appellant relies on evidence of use on the basis that he would not be living there if it was not substantially complete.

27. The energy bills evidence begins with an electric bill dated 24 July 2017 covering the period May-July 2017. This shows 5 kWh of energy were used, which I surmise would reflect the electricity used in connection with the stables. Subsequent electricity usage then increases and varies as I set out in the following table:

5 kWh	May - Jul 2017
254 kWh	Jul - Oct 2017
1924 kWh	Oct 2017 - Jan 2018
1839 kWh	Jan – Apr 2018
251 kWh	Apr – Jul 2018
394 kWh	Jul – Nov 2018
982 kWh	Nov 2018 – Jan 2019
1122 kWh	Jan – Apr 2019
707 kWh	Apr – Jul 2019
512 kWh	Jul – Oct 2019
769 kWh	Oct 2019 – Jan 2020
2850 kWh*	Jan – Apr 2020
2944 kWh*	Jul – Oct 2020
2962 kWh*	Oct 2020 – Jan 2021
3005 kWh*	Jan – Apr 2021

*Quarterly usage not stated on bill but estimated annual usage is stated instead, three bills are included in the table by way of example.

28. Generally, energy bills dip in the summer and are greater in the winter. The appellant has a log burning stove in the lounge area and propane gas bottles outside the building connected to the kitchen. As expected, the bills show increased usage in the colder half of the year such as 982 kWh, 1122 kWh and 769 kWh. However, there is a noticeable increase in autumn/winter usage between October 2017 and April 2018 where the bills show 1924 kWh for one quarter and 1839 kWh for the next quarter. More recent bills only show an estimated annual usage but none of these exceed the total amount shown used between Oct 2017 until April 2018.

29. It seems to me that something must have been happening on site for the energy use to have increased so noticeably. The appellant claims substantial completion by September 2017, yet the energy usage for the period July – October 2017 was only 254 kWh, which is comparable to subsequent summer bills. As the insulation did not arrive until January 2018, and due to the adverse weather in the winter for building, it seems to me that building works may have been paused. This would have been sometime after the September 2017 delivery of timber and thereafter the increased energy use may have been due to the appellant living in the horse box and caravan. Alternatively, the appellant may have been living in the building, in a manner of speaking, but it was not substantially complete due to the lack of insulation.

30. I turn now to the Council Tax evidence. This would merit more weight if the appellant exhibited the receipt and payment of bills actually dated 2017 onwards but he only completed his Council Tax Registration form in October 2021. There is no explanation from him as to why he did not complete the registration form in September 2017, or, for that matter, any time after September 2017. It seems to be more than a coincidence that the form is completed four years later. There may be a perfectly reasonable excuse as to why this is the case, such as a lack of means, but it is not before me. In the document the appellant states that the residential use began in September 2017 and the subsequent Council Tax bills show the appellant agreed to make back payments to cover the previous four years.

31. Other evidence such as insurance, DVLA correspondence and self-assessment completions are not directly relevant to showing substantial completion before the relevant date as they are dated February 2018 onwards. In addition, it is possible the appellant may have been living in the caravan and horse box in February 2018 as the insurance letter is addressed to Wood End Farm, where the appellant's relatives live.

32. I now draw my assessment to a conclusion. Having regard to the totality of the evidence and its overall consistency, I find it does not support that there was a material change of use of the land to residential prior to the relevant date of 24 August 2011. Furthermore, the evidence does not show that the dwelling was substantially complete by the second relevant date of 24 August 2017. The test for the evidence is, on the balance of probabilities, namely, what is more likely than not and that balance of the evidence need only be slightly more than half, in order to satisfy the test, but that has not been demonstrated here.

33. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant. The appellant's own evidence does not have to be corroborated by "independent" evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is provided the evidence is sufficiently precise and unambiguous. However, the evidence is not precise and unambiguous for the reasons given and I conclude that the use as applied for is unlawful, as is the operational development.

Appeal B: The ground (a) appeal

Main Issues

34. The site lies within the Green Belt, as such the main issues are:

(i) Whether the development is inappropriate development for the purposes of the Framework and development plan policy;

(ii) The effect of the development on the openness of the Green Belt;

(iii) The effect of the development on the character and appearance of the area;

(iv) Whether the location of the development is acceptable, having regard to accessibility; and

(v) If the development is inappropriate, 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 development.

Reasons

Whether the development is inappropriate development in the Green Belt

35. The Framework states that a local planning authority should regard the construction of new buildings as inappropriate development in the Green Belt (paragraph 154). The term "building" refers to any structure or erection and it therefore includes the new dwelling at the appeal site. Policy CS 13 of the CS and Policy DP22 of the DPP are the Council's relevant policies on the matter. Despite their age, they are consistent with national policy on Green Belts in that they resist inappropriate development. Policy CS 10 is also relevant as it is directed at the provision of housing within the borough, which is to be in accordance with its site allocations.

36. The appellant submits that the development falls to be considered under paragraph 155(d) of the Framework. The exception to inappropriate development in paragraph 155(d) sets out that the re-use of buildings, provided that the buildings are of permanent and substantial construction, is not inappropriate. This is on the basis that it would not have a greater impact on the openness of the Green Belt and would not conflict with the purposes of including land within it.

37. The gist of the appellant's case is that the residential use constitutes the re-use of a permanent building within the Green Belt. He relies on the 2016 grant of planning permission for the hay/feed store but acknowledges that the current building does not match the approved plans. As established in Appeal A, the appellant's dwelling is not a re-use of a permanent building as there was no evidence of a previous use before the dwelling use. The building was erected as a dwelling in the first instance. Submissions regarding previously developed land are similarly not relevant as the building was erected on part of the paddock, not within the curtilage of the stables. Permitted development rights are not in play as there was no previous use of the building. The 155(d) exception therefore is not applicable.

38. The building is therefore inappropriate development in the Green Belt and inappropriate development is harmful by definition. The development is also contrary to Policies CS 10, CS 13 and DP22.

Openness

39. Moving on to openness, this is an essential characteristic of the Green Belt. The siting of the building in an area where a building did not previously exist results in a reduction in the openness of the Green Belt. Public views of the development are available to passing motorists and walkers along Puddledock Lane from the access into the site. However, these views are largely screened by hedging and the end elevation of the building is only glimpsed when passing.

40. There are two PROW nearby on either side of Puddledock Lane. One passes by the side of The Ship public house and then to the rear of Wood End Farm from where the new building is in full view before the PROW passes into Rowhill

Wood. The other path passes through a field adjacent to Rowhill Cottages but views of the development are screened by a mature line of trees marking the edge of the field.

41. Further afield, the building is visible from Birchwood Road but from this point it is seen against the backdrop of Wood End Farm and in the foreground there are several stables buildings, caravans and horse boxes. There are also private views of the development from some of the first floor windows at Rowhill Cottages.

42. The building is approximately 500 cubic metres in volume and has a footprint of 108 square metres. The appellant submits having regard to its size and vernacular design, it does not contribute to any significant degree of visual harm to the openness of the Green Belt. Openness though is one of the Green Belt's most important attributes and loss of openness, however minor, must be added to the harm to the Green Belt by reason of inappropriateness. The development therefore conflicts with Polices CS 13 and DP22 in terms of openness.

Character and appearance

43. Puddledock Lane is a narrow rural lane that links a large residential area in the north to the village of Hextable to the south. Either side of the lane there are arable fields and horse paddocks and slightly further away a plant nursery. The area surrounding the appeal site is therefore rural in character with open fields and hedgerows. However, given its proximity to the housing area, it also has an "urban fringe" character in part, having regard to the assortment of stables and related paraphernalia on one side of Puddledock Lane near the junction with Birchwood Road.

44. The appellant's stables are tucked behind the hedge bordering the lane and the new dwelling is sited very close to the concrete yard adjacent to the stables. Behind the dwelling are paddocks and immediately adjacent to the access is the drive leading to Wood End Farm house and Wood End Farm agricultural buildings with Rowhill Cottages opposite the farm house.

45. The lane rises in height from north to south which means the new dwelling is more prominent in long distance views from Birchwood Road but the hedge along the lane and alongside one of the PROW provide some screening. The appellant has planted some trees either side of the dwelling and, in time, when they mature, they would break up the outline of the building and partially screen it from view but in the mean time the dwelling is visible.

46. The Council raise no concerns over the design of the dwelling and I see no reason to disagree. However, the prominent siting of the building together with its residential curtilage is harmful to the rural character and appearance of the area. The level of harm though is not significant due to the partial screening afforded by the roadside hedge and the small size of the curtilage. The area to the rear of the dwelling is little more than a strip of grass to enable the siting of the gas bottles and the area to the sides of the dwelling are just large enough to accommodate the new trees. The front garden provides a modest sitting out area, which is marked by a bench. Nevertheless, there is harm and for these reasons the development does not accord with Policy DP2 of the DPP, which requires good design for Dartford.

Location of the development

47. Having regard to the accessibility of the development, I find it is just over a five minute walk to the bus stop on Birchwood Road, where there is a service towards Bexley. It is a little further to Hextable, where there is a small convenience store but the lane has no footpath or street lights and, as such, it is unlikely that people would walk this short distance. At my visit though I did see some dog walkers along the lane and grooms walking from the bus stop to the stables lower down Puddledock Lane. Nevertheless, the national speed limit applies along the lane from Birchwood Road until Hextable and the Council advise it is used as a cut through.

48. Policy DP6 of the DPP states greenfield windfall sites will only be permitted if highly sustainably located and if needed to rectify an absence of a five year housing land supply (HLS). I have not been provided with any information about five year HLS but my view on the accessibility of the site is that it is not on a safe and attractive walking route. The development is therefore in conflict with this policy.

Other considerations

49. The appellant has not submitted any other considerations within his enforcement Statement of Case as he states, "it is not necessary for special circumstances to exist in these circumstances[1] as the development does not require planning permission and is lawful under permitted development". I have dealt with those points in my earlier reasoning. Nevertheless, the Council refer to and include details of an earlier retrospective application made in 2021[2] for the erection of a one bedroom dwelling with ancillary workshop on the ground and first floor. The appellant's circumstances put forward with this application are included as Appendix L in the Council's Statement of Case. They may now be out of date but I shall still have regard to them, notwithstanding the appellant's earlier argument and in the interests of fairness.

50. The ill health of a close family member who ran Wood End Farm, the recent bereavement of a close family member and the requirement to be close to Wood End Farm to help with the care of the animals amount to personal circumstances. However, personal circumstances can change whereas the erection of the dwelling is permanent. In my view they are insufficient to set aside the harm to the Green Belt and the character and appearance of the area.

Planning balance

51. The erection of the building and subsequent residential use is inappropriate development in the Green Belt. Substantial weight must be attached to any harm to the Green Belt and, for the reasons given, the new dwelling results in a significant loss of openness. The development also results in some harm to the character and appearance of the area. The other considerations set out above do not clearly outweigh these objections. Consequently, no very special circumstances exist and the development is contrary to the Council's policies.

[1] The paragraph 155(d) of the Framework argument
[2] Council Ref: 21/00208/FUL

52. However, if the appeal is dismissed, the appellant would lose his home. This would be an infringement of his human rights under Article 8 of the European Convention on Human Rights, as set out in schedule 1 of the Human Rights Act 1998. This deals with the right to respect for family life and the home. If the appeal is dismissed, the appellant has indicated that he would have to return to living in his horse box and showering in the stables. The infringement of the appellant's human rights though must be weighed in the public interest.

53. For the reasons given above, I have found that the development is harmful to the need to protect the open countryside from urban sprawl and I am satisfied that this legitimate aim can only be adequately safeguarded by the refusal of permission. On balance, I consider that the dismissal of the appeal does not have a disproportionate effect on the appellant. Therefore, I conclude that the development on ground (a) should fail.

Conclusions

Appeal A

54. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the continued use of the building as a self-contained residential unit was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Appeal B

55. 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 deemed application.

D Fleming

INSPECTOR