



Appeal Decision

Site visit made on 9 January 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/G2245/C/22/3303531

Land at Heathwood Stud, Heathwood Gardens, Swanley, Kent BR8 7HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Robert Love against an enforcement notice issued by Sevenoaks District Council (the LPA).
- The enforcement notice was issued on 22 June 2022.
- The breach of planning control as alleged in the notice is: without planning permission, erection of two buildings on land outside of the residential curtilage (marked X and Y in the approximate location on the attached Plan A).
- The requirements of the notice are:
 - Demolish the two buildings marked X and Y in the approximate location on the attached Plan A
 - Remove all resultant material 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), (f) 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.

Summary of decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant has provided details of a Planning Permission (LPA reference: 23/00375/FUL) (the 2023 planning permission) and a Lawful Development Certificate (LPA reference: 23/00372/LDCPR) (LDC) granted in April 2023, after the timetable for submission of evidence. The parties have had an opportunity to comment on these documents and there would be no injustice to either party were I to consider them. I have therefore done so in coming to my decision.
2. In December 2023 the National Planning Policy Framework (the Framework) was updated. No changes were made to the matters raised by the appellant and the Council, and it has therefore not been necessary to seek further views of the parties.

The Notice

3. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990, which relates to the content and effect of an enforcement notice.
4. In Section 3 of the Notice, the alleged breach of planning control refers to the "...erection of two buildings..." described as being "marked X and Y in the approximate location on the attached plan A".

5. At the point marked X on the plan is an open-sided timber structure with a hipped roof, and in photographs provided by the Council it is seen in use for the parking of two vehicles.
6. The Y on the plan marks a building shown on the Ordnance Survey base plan. That building also appears on the base plan for a Certificate of Lawful Existing Use/Development (CLEUD)¹ dated May 2020. This building is a small rectangular structure enclosed with dark-stained timber boarding, with uPVC double doors and a corrugated hipped roof.
7. Building Y is therefore not the larger open-sided timber structure with a hipped roof adjacent to it, which the Council refer to in its enforcement report.
8. The appellant's statement refers to both the smaller rectangular structure and the larger open-sided timber structure. I have also considered the views of both parties on this matter, and the LPA has provided a revised plan correcting the location of Building Y. No injustice would arise to the appellant or the Council were I to correct the Notice by replacing the Plan.

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

9. Heathwood Stud is a parcel of land in the Green Belt comprising agricultural land and a stable block and compound in residential use. The lawfulness of the conversion of the stable block into a dwelling was confirmed in the LDC, which also defines the extent of the land in residential use. The two buildings subject to the Notice are outside the residential area of land.

Main Issues

10. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- the effect of the proposed development on the openness of the Green Belt; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

11. Chapter 13 of the Framework sets out national policy in relation to the Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and permanence. One of the five purposes of Green Belt is to assist in safeguarding the countryside from encroachment.
12. Paragraphs 152 to 154 of the Framework state that the construction of new buildings in the Green Belt should be considered 'inappropriate development'.

¹ LPA ref: 19/03408/LDCEX

Inappropriate development is by definition harmful, and should not be approved except in very special circumstances (VSCs). Substantial weight must be given to any harm to the Green Belt, and VSCs will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

13. Paragraph 154 also sets out exceptions to inappropriateness, including 154(b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, etc, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
14. The Council describes the lawful use of the Land as either agricultural or equestrian use. The appellant advises the buildings are used in association with the dwelling, but the buildings are not within the residential area identified in the LDC.
15. I have seen no evidence that either building is used for outdoor sport or recreation in connection with the existing agricultural/equestrian use. Or that they are part of, or constitute, a material change of use of the land to facilities for outdoor sport or recreation.
16. Sevenoaks District Council - Development in the Green Belt Supplementary Planning Document (SPD) (2015) provides guidance to assist with the interpretation and implementation of policies and to help provide consistency in decision making. In relation to recreation, it acknowledges that provision may be made for structures related to outdoor recreation, but that new buildings should be limited to facilities that are the minimum essential for the operation of the associated activity.
17. I have not seen a convincing case that the open-sided building X would be an appropriate facility in connection with outdoor recreation. I note the appellant's reference to the parking of a mower and the storage of equipment used in association with the upkeep of the land, which he claims is used for recreational purposes and the grazing of horses. However, I have not seen adequate evidence of the nature of any lawful outdoor recreational use, the equipment required in connection with it, or whether it would be the minimum essential for operation of that use.
18. Consequently, none of the exceptions apply, and the development is inappropriate development in the Green Belt.
19. Sevenoaks District Council Allocations and Development Management Plan (2015) (ADMP) Policy GB3 provides for residential outbuildings in the Green Belt in certain circumstances. However, irrespective of their proximity to the residential curtilage of the dwelling, neither building is within the area of land acknowledged by the LDC to be in residential use. The buildings therefore gain no support from Policy GB3, or the SPD paragraphs associated with it.
20. In conclusion, the development is inappropriate development in the Green Belt. Unless VSCs exist, the development therefore conflicts with paragraph 152 of the Framework. I am required to give substantial weight to this harm in the planning balance, in accordance with paragraph 153 of the Framework.

Openness

21. Spatially, both buildings consist of hipped roofed canopies supported by timber corner posts and cross-members. Building X is of a scale sufficient to accommodate two vehicles, and was described as a 'car port' in a planning application² submitted for its retention. Plans show the gross floor area of building X to be around 29m², although the overhang of the roof follows its concrete base which is slightly larger at 6m x 6m. Building Y is wider but shallower in form, and the appellant advises its floor area is around 20m². The buildings therefore result in a volumetric increase in built development on land where previously, no built form existed. Consequently they spatially reduce the openness of the Green Belt.
22. Visually, the buildings are located outside the built-up area of Swanley, and outside the residential curtilage acknowledged in the LDC. Although some boundaries of the land are wooded, the height of the buildings, and the relatively lower height of boundary fencing, means parts of the roofs can be seen above boundary fencing and gates in some views, particularly in the winter months. Although seen with other buildings and fences associated with the dwelling, they are more prominent than other buildings in some views, and are closer to Heathwood Gardens and the footpath at the end of the road. Even if they are comparable in size to domestic garages, their height and scale, and locations in open land reduce the visual openness of the Green Belt.
23. In conclusion, the development is harmful to the openness of the Green Belt, and substantial weight should be given to this harm in the planning balance, in accordance with paragraph 153 of the Framework.

Other considerations

Residential 'permitted development'

24. In relation to building Y, the appellant advises that a larger structure could be erected in the residential curtilage of the dwelling as 'permitted development'³. The LDC⁴ demonstrates one such development. Parts of that particular development would require significant earthworks not shown on the submitted drawings, on account of the sloping land levels. Nevertheless, there is a realistic prospect that development of a similar size, or larger, could take place as permitted development within the residential area.
25. The appellant proposes that a planning condition could remove all permitted development rights associated with the dwelling, should the appeal on ground (a) succeed and the DPA be granted. He argues that doing so would avert greater harm to the Green Belt than that occurring on account of the buildings, and particularly building Y, which the appellant advises is currently used in association with the residential use.
26. However, further development within the residential area of land would have different effects to that on the wider parcel of land. Spatially buildings X and Y may be no larger than buildings which could be constructed within the residential area. But visually, the buildings, and even building Y alone, are

² LPA reference: 22/00471/HOUSE

³ The Town and Country Planning (General Permitted Development) (England) Order 2015

⁴ "Erection of single storey side extension and a single storey 2.5 metre high flat roof outbuilding"

more prominent and have a greater visual effect on the Green Belt, being on less developed land beyond the residential area.

27. Therefore, only limited weight in favour of the development can be attributed to the potential to remove 'permitted development' rights for the residential area.

The 2023 planning permission

28. The 2023 planning permission relates to building X and permits the "Provision of stable building with tack room and feed store incorporating modification of existing open car port structure". The appellant's fallback position is that the planning permission could be implemented.
29. Notwithstanding the additional works of enclosure of the building, the development with planning permission is the same building as that subject to the Notice, with modest additions. I am therefore satisfied that development subject to the 2023 permission forms part of the breach of planning control. It seems to me more than likely that, in the event the notice is upheld, the appellant would implement the 2023 permission, and in effect retain the building subject of the notice.
30. Indeed, under Section 180 of the Act, where after the service of an enforcement notice, planning permission is granted for any development carried out beforehand, the notice shall cease to have an effect so far as inconsistent with that permission. That is the case here.
31. The development subject of the 2023 permission would have external walls and would therefore have a greater impact on openness than the building subject to the notice, since it would appear as a greater massing of built form. Given the realistic prospect of the 2023 permission being implemented, and that it would be more harmful to Green Belt openness than the development before me, I attribute considerable weight in favour of the development to the fallback position, insofar as it relates to building X.

Very Special Circumstances

32. In conclusion, in relation to building Y, the other considerations in favour of the development therefore do not clearly outweigh the substantial weight I attribute to the harm to the Green Belt, arising from inappropriateness and harm to openness. Consequently, the very special circumstances necessary to justify that part of the development do not exist.
33. However, in relation to building X, given the weight I attribute to the fallback position of the implementation of the 2023 permission, the other considerations clearly outweigh the harm to the Green Belt. Very special circumstances therefore exist which justify that part of the development.

Conditions

34. Considering the conditions imposed by the Council on the 2023 planning permission, I have had regard to the approach in the Framework and the Planning Practice Guidance. In some cases I have re-structured those conditions, without altering their fundamental aims.
35. Conditions are necessary to specify the plans and materials for clarity. And to require a scheme for the storage and disposal of manure and stable waste and

any external lighting, in the interests of the character and appearance of the area and living conditions of nearby residents. A condition is also required to limit the use of the building to a stable with tack room and feed store.

36. Condition 3 is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the scheme for the storage and disposal of manure and stable waste and any external lighting before the development takes place.
37. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal. Or if the details are approved but not implemented in accordance with an approved timetable.
38. A time period for commencement is not required, as the development has been carried out.

Conclusion on Ground (a)/DPA

39. The development is inappropriate development in the Green Belt and harms its openness. In relation to building Y, there are no other considerations which clearly outweigh the harm arising from inappropriate development and to openness. The very special circumstances necessary to justify the development do not therefore exist. It therefore conflicts with national Green Belt policy found in Chapter 13 of the Framework, and fails to gain the support of ADMP Policy GB3, which are described above. There are no other material considerations that require a decision to be made contrary to national Green Belt policy.
40. In relation to building X, there are other considerations which clearly outweigh the harm arising from inappropriate development and to openness. As such, the very special circumstances necessary to justify the development exist. Subject to the conditions set out above, the development accords with ADMP Policy LT2, which permits equestrian development in the Green Belt in certain circumstances, and national Green Belt policy found in Chapter 13 of the Framework, which is described above. There are no other material considerations that require a decision to be made contrary to the development plan.
41. The appeal on ground (a) therefore succeeds in part, and the DPA is allowed in relation to erection of building X. The appeal on ground (f) in relation to building X does not therefore fall to be considered.

The appeal on ground (f)

42. Appeals on ground (f) are made on the basis that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
43. Section 5 of the Notice requires demolition of the buildings and the removal of all resulting materials from the land.

44. Although it is not explicitly stated, it is clear from the requirements that the purpose of the notice is to remedy the breach of planning control. On its face, the removal of the buildings would not go beyond what is necessary to do so.
45. However, where it appears there may be an obvious alternative which would overcome the planning harm at less cost and disruption than total removal, I may consider it.
46. In relation to building Y, by removing permitted development rights associated with the dwelling, to compensate for the harm to the Green Belt outside the residential area. However, in my consideration of ground (a), I found that doing so would not overcome the harm to the Green Belt. It is therefore not an alternative which would overcome the planning harm.
47. Although I have granted the DPA in respect of the approved works to building X, the requirements of the Notice relating to the acceptable part of the development will not be deleted, to avoid any grant of unconditional planning permission through Section 173(11) of the Act. Nevertheless, under Section 180 of the Act, a notice shall cease to have effect insofar as inconsistent with a planning permission, where that permission was granted after the service of an enforcement notice for development carried out beforehand.
48. The appeal on ground (f) therefore fails.

The appeal on ground (g)

49. Appeals on ground (g) are made on the basis that the time for compliance with the requirements of the notice is too short.
50. The Notice requires the demolition of the buildings and removal of the resultant materials from the land within 3 months.
51. I have seen no evidence that specialist contractors would be required to remove the open-sided timber structures with felt roofs, or of any particular reasons why they could not be dismantled or otherwise removed within 3 months.
52. Building Y was used for the storage of some items of outdoor furniture and a barbeque. I have not seen compelling justification for a need for alternative storage space for these, or other items, being stored under building Y or either building.
53. There is therefore insufficient justification for a longer period of 9 months. With the information before me 3 months is a reasonable time period for compliance with the requirements of the Notice.
54. The appeal on ground (g) therefore fails.

Overall Conclusion

55. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of a building on land outside the residential curtilage (marked X in the approximate location on the attached Plan A), but otherwise I will uphold the notice with a correction and variations and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far

as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Formal Decision

56. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision, for the plan attached to the enforcement notice.

57. Subject to the correction, the appeal is allowed insofar as it relates to the erection of a building on land outside the residential curtilage (marked X in the approximate location on the attached Plan A) and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for the erection of a building on land outside the residential curtilage (marked X in the approximate location on the attached Plan A) at Land at Heathwood Stud, Heathwood Gardens, Swanley, Kent BR8 7HN subject to the following conditions:

1. The building shall be used as an equestrian stable, with tack room and feed store, and for no other purpose.
2. The development hereby permitted shall be carried out in accordance with the Block Plan dated 13th March 2023, reference 3784/2A. The materials used in the construction of the development shall be those indicated on the approved plans.
3. The building hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 1 month of the date of this decision a scheme for the storage and disposal of manure and stable waste and any external lighting shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. If within 4 months of the date of this decision the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

58. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the erection of a building on land outside the residential

curtilage (marked Y in the approximate location on the attached Plan A) and planning permission is refused in respect of the erection of a building on land outside the residential curtilage (marked Y in the approximate location on the attached Plan A) at Land at Heathwood Stud, Heathwood Gardens, Swanley, Kent BR8 7HN on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Peter White

INSPECTOR



Plan A

The plan referred to in my decision dated 18 March 2024.

Peter White BA(Hons) MA DipTP MRTPI

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Land at Heathwood Stud, Heathwood Gardens, Swanley, Kent BR8 7HN

Not to scale

