



Appeal Decision

Site visit made on 5 March 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal Ref: APP/T2215/C/22/3296542

Land at Braeside, Roman Villa Road, Darenth, Kent DA2 7QS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Wayne Lee against an enforcement notice issued by Dartford Borough Council.
- The notice was issued on 8 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for the storage of caravans, plant, machinery, trailers, vehicles, portaloos, gas bottles, building & landscaping equipment & materials, bagged waste materials, the parking of vehicles and the occupation of two touring caravans for human habitation with associated laying of hardstanding, erection of fencing and an enclosure, erection of a timber dry store and the creation of a new access.
- The requirements of the notice are to:
 - i. Cease to use the access to the land from Roman Villa Road
 - ii. Cease to lay hard surfacing on the land
 - iii. Cease to use the land for human habitation (residential purposes)
 - iv. Cease to use the land for storage purposes
 - v. Cease to park vehicles on the land
 - vi. Dismantle and remove from the land, all internal fences and dry store structures (other than outer boundary fences which enclosure [sic] the whole of the land)
 - vii. Render the land free of open storage by removing all items stored on the land to include: caravans, trailers, vehicles, plant, machinery, animal/horse vehicle trailers, portaloos, gas bottles, bagged waste, building, scaffold and landscaping materials, tools, equipment, water storage, and any other associated business items and domestic possessions.
 - viii. Remove all hard surfacing (surface gravel, base materials and timber sleepers) from the land and make good the land as an open grassed area by infilling and levelling with topsoil, seeding and allowing the turf to grow naturally.
 - ix. Close up the access formed from or onto Roman Villa Road by erecting a post and wire fence and continuing the existing shrub boundary planting across the enclosure.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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 Decision: the appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant has appealed under ground (c) and suggests that, among other things, the two caravans that have been suggested to be used for human habitation have not been so occupied. That would be better considered under a ground (b) appeal that this matter has not occurred. The Council have

considered this matter in their submissions. It would not cause injustice to either party if I considered this as an appeal under ground (b).

2. In the requirements of the notice at vi. the Council include the word "enclosure". It would be clearer if the word 'enclose' were used. That is a minor correction that would not cause injustice to the appellant or the local planning authority. I shall correct the enforcement notice accordingly.

The Appeal on Ground (b)

3. An appeal on this ground is that the matters described in the notice have not occurred. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
4. The appellant suggests that the two touring caravans stated within the enforcement notice to have been used for human habitation were, in fact, used by staff of the landscaping business as welfare facilities.
5. The Council suggest that there was a reasonable likelihood that they were residentially occupied. The caravans were connected to gas, water and electricity. A washing machine was located in a shed between the two caravans.
6. Nevertheless, whilst mess facilities could be provided on work sites, if workers were returning to the yard after work, the caravans could have been used for other purposes as welfare facilities. The caravans and washing machines could be used for changing and washing work clothing, as well as making drinks and resting. On the balance of probability, I consider the caravans were not used for human habitation.
7. For these reasons, I conclude that the appeal under ground (b) should succeed to that extent. I will vary the enforcement notice to remove reference to residential occupation of the caravans.

The Appeal on Ground (c)

8. An appeal on this ground is that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
9. The appellant has argued this ground in relation to parts of the allegation relating to the provision of a fence and the access.
10. There is no dispute that the fence and access constitute development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the fence or access.
11. The provision of fences can constitute permitted development granted planning permission under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, such a fence is required to have some function of enclosure. In this case, the fence divides the appeal site to enclose uses that are listed in the notice. As a result, the fences enclose part of the mixed use described in the enforcement notice. They constitute part of the development alleged. Article 3(5)(b) of the GPDO states that Schedule 2 of the GPDO does not apply where, in the case of permission granted in connection with an existing use, that use is unlawful. As

such, the fence does not benefit from that permitted development right in the GPDO.

12. It has been suggested that the access referred to in the enforcement notice existed, but that it had been stopped up for a period of time from 1990. An aerial photograph dated June 2015 supplied by the Council shows a hedge on the roadside in that location. That suggests the access did not exist at that stage. I note that a planning application was refused on 25 November 2019 (reference DA/18/00636/COU) that included provision of a "new vehicular access" in the same location, albeit that is not referred to in the covering letter submitted with the application. On the balance of probabilities, therefore, I consider this is a new access.
13. My attention has been drawn to Part 2, Schedule 2 of the GPDO. Class B of that part refers to means of access to a highway from a road which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in Schedule 2 of the GPDO. I understand Roman Villa Road is classified. It is unclear what other development has taken place in accordance with Schedule 2 of the GPDO. For these reasons, I consider that the access does not benefit from the planning permission conferred by Class B, Part 2, Schedule 2 of the GPDO.
14. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the fences and access do constitute part of the development described in the enforcement notice. Since no planning permission has been granted for the development they thereby constitute a breach of planning control.
15. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Preliminary Matters

16. Taking account of the previous grounds of appeal, the development subject of the ground (a) appeal and the deemed planning application comprises the material change of use of the land for the storage of caravans, plant, machinery, trailers, vehicles, portaloos, gas bottles, building & landscaping equipment & materials, bagged waste materials, the parking of vehicles with associated laying of hardstanding, erection of fencing and an enclosure, erection of a timber dry store and the creation of a new access.
17. I note that the draft Dartford Local Plan (draft LP) has undergone examination and been proposed for adoption by the Council shortly. If adopted, it will replace the Dartford Core Strategy adopted September 2011 (CS) and the Dartford Development Policies Plan adopted July 2017 (DPP). As a result, it carries considerable weight in the planning process.

Main issues

18. The main issues are:
 - Whether the development comprises inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;

- The effect of the development on the intrinsic character and beauty of the landscape;
- The effect of the development on highway safety with regard to the access from Roman Villa Road;
- 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 proposal.

Reasons

Inappropriate development

19. The Framework states that new buildings within the Green Belt should be considered inappropriate with a number of exceptions. This includes the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments, provided the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Certain other forms of development are also not inappropriate in the Green Belt if they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land.
20. Policy CS13 of the CS and Policy M13 of the draft LP resist inappropriate development in accordance with national policy. Policy DP22 of the Dartford DPP reflects the Framework in setting out the essential characteristics of the Green Belt as openness and permanence. It sets out that development for outdoor sport and recreation should not materially impact on the character and amenity of the locality or landscape.
21. The appellant suggests that the storage of caravans is related to the use of the land to the opposite side of the house at Braeside as a camping and caravanning site. I accept that use is an outdoor recreation use. However, it is unclear whether the caravans stored are used solely on that caravanning site or taken by their owners to other sites. On that basis and on the balance of probability, the storage of caravans is not related to the use of nearby land as a camping and caravanning site. As such, it is not part of an open recreation use.
22. I note that the use of part of the land in relation to the appellant and his son's landscaping business has resulted in a material change of use of the land. That use involves the storage of various paraphernalia, including the two caravans, building and landscaping equipment and materials. It also includes the provision of hardstanding, erection of fencing and an enclosure and the dry store.
23. However, and even if I am wrong about the caravan storage use not being an outdoor recreation use, these exceptions to inappropriate development also require the development to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. The hardstanding is laid on the ground and enables the storage uses, either as a base for the storage or for moving items around the site. Other elements of the development result in the storage of various articles as listed in the description of the breach of planning control. These result in an effect on the spatial openness of the Green Belt in this location.

24. The site is visible in glimpsed views through the boundary planting from Roman Villa Road and Darenth Hill. Its location toward the top of the hill means that it is also visible in wider views, albeit obscured to a large extent by boundary planting. Nevertheless, it does affect the visual openness in this location.
25. The uses within the description under ground (a) have resulted in development encroaching into the countryside. As a result, it conflicts with the purposes of including land within the Green Belt.
26. For these reasons, I conclude that the development has resulted in inappropriate development in the Green Belt that has harmed openness and conflicts with the purposes of including land within it. As a result, it conflicts with Policy CS13 of the CS, Policy DP22 of the DPP, Policy M13 of the draft LP and the Framework.

Landscape

27. Braeside is located on the junction of Roman Villa Road and Darenth Hill. It is at a high spot within an area of gently rolling hills, the immediate surroundings being mainly open fields with patches of woodland and sporadic built development. Residential and other development to the end of Darenth Hill and around Coombfield Drive is located on rising ground above the valley separating it from Braeside. As a result, the appeal site is relatively prominent in views from the roads and in wider views, particularly the development around Coombfield Drive.
28. The appeal site is surrounded by trees and substantial hedgerows. Those to the sides facing Coombfield Drive and Roman Villa Road are substantial evergreen, laurel and leylandii, hedges. Visibility through these, other than at the access, is limited. The boundary with Darenth Hill comprises deciduous trees such that there are glimpsed views of the caravans stored close to that boundary between and through the trees. As a result, visibility of the site is limited but the stored caravans and other development do affect the appearance of the landscape in this location.
29. For these reasons, I conclude that the development harms the intrinsic character and beauty of the landscape. As such, it would conflict with Policies DP2 and DP22 of the DPP that seeks good design that responds to, reinforces and enhances positive aspects of the locality and the Framework that seeks development to contribute to and enhance the natural and local environment. It also conflicts with Policy M1 of the draft LP that seeks development to respond to, reinforce and enhance positive aspects of the locality.

Highway safety

30. Access is provided to Roman Villa Road. This is a narrow country lane and the access is close to the junction with Darenth Hill. The road bends gently as it passes the separate entrance to the house at Braeside and there are additional accesses to the camping and caravanning fields.
31. The access is reasonably wide, with tall hedges to either side. The hedges restrict views from the access in either direction along Roman Villa Road. As a result, vehicles leaving through this access are likely to affect road safety as drivers would have limited visibility of other road users.

32. I note that a condition has been suggested to overcome the harm to highway safety requiring provision of appropriate visibility splays. It is unclear precisely what that would require or whether it would wholly overcome the risk to highway safety.
33. On that basis, I conclude that the development has resulted in harm to highway safety. As such, it is contrary to Policies DP2, DP3 and DP4 of the DPP that seek to protect the safety of road users and for development to include appropriate vehicle access arrangements. It would not comply with Policy M16 of the draft LP that seeks appropriate vehicle access arrangements for development. Additionally, it would be contrary to the Framework that states that development should be prevented or refused if there would be an unacceptable impact on highway safety.

Other considerations

34. The appeal site is located adjacent to the appellant's home. As such, this is a convenient location for storage in relation to his and his son's landscaping and paving business, particularly of vehicles, tools and materials. They do not have access to another yard or buildings that would accommodate this use. The relationship between the yard and house means that the location is secure.
35. The appellant also trades vehicles and a number of these have been removed from the site following negotiations with the Council. I understand these are stored outside the appeal site.
36. The appellant has suggested that they would accept conditions limiting occupation to a temporary period. Alternatively, they suggest occupation could be limited to them by condition. I will take these into account in coming to my conclusion.
37. My attention has been drawn to Policy DP6 of the DPP that relates to sustainable residential locations. As I have found that there is no residential use of the site, this policy is not directly relevant to the development.

Conclusion

38. I have found that the material change of use of the land for the storage of caravans, plant, machinery, trailers, vehicles, portaloos, gas bottles, building & landscaping equipment & materials, bagged waste materials, the parking of vehicles with associated laying of hardstanding, erection of fencing and an enclosure, erection of a timber dry store and the creation of a new access harms the openness of the Green Belt and conflicts with the purposes of including land within it. As such, the development constitutes inappropriate development. In addition, the access referred to in the description harms the intrinsic character and beauty of the landscape and highway safety.
39. The development provides secure accommodation for a small business that provides employment opportunities, contributing to the economic viability of the area and providing social benefits. I note that conditions limiting the occupation to a temporary period or particular occupier could limit harm to that period or for such time as the appellant were occupying the land. However, the harm would continue for that period or such time as the appellant remains in occupation. As a result, these matters can only attract modest weight. As such, the substantial weight to be given to Green Belt harm and any other harm is not clearly outweighed by other considerations, either individually or

cumulatively, sufficient to demonstrate very special circumstances. Therefore, the proposed development is contrary to Policy CS13 of the CS, Policy DP22 of the DPP, Policy M13 of the draft LP and the Framework that seek to protect the Green Belt from inappropriate development.

40. For the reasons set out above, on balance I conclude that the development does not accord with the development plan and other material considerations do not indicate that planning permission should be granted. The appeal on ground (a) therefore fails.

The Appeal on Ground (g)

41. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The notice requires compliance within four months. The appellant suggests a period of between 6 to 12 months would be more reasonable.
42. I note that the appellant is required to cease the uses, remove the caravans, plant, machinery, trailers, vehicles, portaloos, gas bottles, building & landscaping equipment & materials, bagged waste materials and vehicles along with removal of the hardstanding, fencing and an enclosure, timber dry store and access. Those are substantial works. The appellant and owners of the caravans would be required to find alternative accommodation for the caravans, along with alternative accommodation for the landscaping and paving business. I consider that it would not be reasonably possible to move the caravans and other storage, and carry out all those works, within the four months required by the notice.
43. The appellant has suggested that planting would need to be carried out at an appropriate time of year. However, the Council indicate they could extend the period for compliance with the notice in this regard if necessary.
44. Taking all of the above into account, I consider that a period of six months would be reasonable to enable all the requirements of the enforcement notice to take place.
45. For these reasons, I conclude that the appeal under ground (g) should succeed to that extent.

Formal Decision

46. It is directed that the enforcement notice is corrected and varied by:
- By the deletion of "and the occupation of two touring caravans for human habitation" from section 3. the matters which appear to constitute the breach of planning control;
 - By the deletion of "iii. Cease to use the land for human habitation (residential purposes)" and consequential re-numbering of section 5. what you are required to do;
 - By the deletion of "enclosure" and the substitution of "enclose" in paragraph vi. of section 5. what you are required to do;
 - By the deletion of "4 months" and the substitution of "6 months" as the period for compliance.

47. Subject to the corrections and variations, 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.

AJ Steen

INSPECTOR