



Appeal Decisions

Site visit made on 20 February 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/L3625/C/23/3319832 (Appeal A) & 3319833 (Appeal B) Land at Duxhurst Cottage, 6 Duxhurst Lane, Reigate, Surrey RH2 8QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mrs Sarah Delany (Appeal A) and Mr Garry Delany (Appeal B) against an enforcement notice issued by Reigate and Banstead Borough Council.
 - The notice was issued on 6 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a storage shed in the Metropolitan Green Belt. (shown as black crosshatched on the plan)
 - The requirements of the notice are to:
 1. Demolish the unauthorised storage shed.
 2. Remove from the land all materials and debris resulting from the demolition.
 - The period for compliance with the requirements is: 5 calendar months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal C Ref: APP/L3625/W/23/3319297 Duxhurst Cottage, 6 Duxhurst Lane, Sidlow, Surrey RH2 8QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Delany against the decision of Reigate and Banstead Borough Council.
 - The application Ref 22/02500/RET, dated 14 November 2022, was refused by notice dated 11 January 2023.
 - The development proposed is 'retrospective application in respect of repair / reinstatement works to pre-existing barn'.
-

Decisions:

Appeals A & B:

1. It is directed that the enforcement notice is corrected and varied by:
 - At section 1 of the notice, after the words 'within paragraph' the deletion of '(b)' and the insertion of '(a)', so that it reads 'within paragraph (a) of section 171A(1) of the above Act'.
 - At section 6 of the notice, the deletion of '5 calendar months' and the insertion of '9 months' so that it reads '9 months from the date this notice takes effect'.
2. Subject to the correction and variation above, the appeals are dismissed and the enforcement notice is upheld.

Appeal C:

3. The appeal is dismissed.

Preliminary Matters

Appeals A & B

4. At section 1 of the enforcement notice, it is stated that the notice is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (b) of section 171A(1) of the Act. However, section 171A(1)(b) is 'failing to comply with any condition or limitation subject to which planning permission has been granted'. It is clear from the four corners of the notice that the enforcement notice has been issued because the Council considers the breach to be development without the required planning permission, which falls under section 171A(1)(a). I shall therefore correct the notice to refer to section 171(1)(a) and, since both parties have advanced their cases on this basis, there would be no injustice to either party.
5. The enforcement notice has been served on the Bank of Scotland PLC. The appellants advise the land subject to the appeal is on a separate title to the house and the mortgagee has confirmed it has no interest in this [sic]. However, it is not suggested that copies of the enforcement notice were not served as required by section 172 of the Act and the appellants have not appealed under ground (e).

Appeal C

6. While the appellant identifies their name as 'Mrs Sarah Delany' on their appeal form, only their surname is given on the planning application form. Since it is only the applicant who has a right of appeal under section 78 of the Act, I have used the name given on the application form on the banner heading above.
7. Since the appeal was made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. The parties have been given the opportunity to comment on the implications of the revised Framework on the appeal.

Appeal C: Section 78

Main Issues

8. The main issues of the appeal are:
 - Whether the appeal scheme is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (December 2023)(the Framework) and relevant development plan policies;
 - The effect of the appeal scheme on the openness of the Green Belt; and
 - If it is 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 required to justify the appeal scheme.

Reasons

Whether inappropriate development in the Green Belt

9. The appeal site is located in the Metropolitan Green Belt and comprises a substantial plot of land, with a dwellinghouse, Duxhurst Cottage, and outbuildings. The appeal building is a single storey structure with a hipped roof,

which is located next to Duxhurst Lane, towards the end of a winding driveway which leads to Duxhurst Cottage. The appeal building measures around 4m in height, with a footprint of around 122 square metres and is constructed of timber, with a brick base, clay roof tiles and roof lights.

10. Policies NHE5 and NHE6 of the Reigate and Banstead Development Management Plan 2019 (the DMP) both seek to protect the openness of the Green Belt. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
11. The construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 154 of the Framework. The exception under paragraph 154(c) is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. The appellant suggests the appeal building has been constructed on original footings of a waggon shed dating back to early 1900s. On their application form, the appellant describes the appeal scheme as repair/reinstatement works to pre-existing barn.
12. A statement of truth, provided by the resident of No 3 Duxhurst Lane and whose firm carried out the works to the appeal building, states there was a waggon shed of exactly the same construction, in the same position, which was standing until the late 1990s, after which it fell into serious disrepair and became unsafe. Remains of the waggon shed are stated to have remained for some time, overgrown in weeds and brambles. The brick foundations are asserted to have remained in the ground and to have been incorporated into the appeal building.
13. The Council has provided me with a number of aerial photographs, dating back to 1999. However, the waggon shed is not evident in aerial photographs dated 1999, 2008, 2012-13 and 2018-19. While it is possible vegetation obscured the remains of a building, had there been any substantive elements of the waggon shed present, I would expect it to be visible in the aerial photographs provided. However, it is not.
14. The appellant has provided me with an aerial photograph of the site dated 2018. Vegetation has been removed, revealing what appears to be disturbed ground. While some of the footings of the waggon shed may have been present, it appears from the photograph that very little of the structure was present at that time. The appellant states on their application form that the work to construct the appeal building were started on 1 February 2020, and so it seems likely that the waggon shed was substantially demolished for some considerable time before construction of the appeal building. As a consequence, I find the works do not constitute an extension or alteration of a building, but rather comprise the erection of a new building.
15. The appellant suggests the appeal building is within the boundaries of the land associated with Duxhurst Cottage. I have therefore considered whether it could be considered an extension to the main dwelling. Whether a detached structure would amount to an extension of an existing building is a matter of fact and degree. For residential outbuildings, it is reasonable to take into account

whether the building is a normal domestic adjunct, having regard to its purpose, use, its relationship with the original building and its size.

16. The appeal building is a substantial structure. During my visit I saw that it was being used for the storage of wood and residential paraphernalia, including a lawnmower. This is consistent with the appellant's suggested use of the building. However, the appeal building is located a significant distance from Duxhurst Cottage and in my view, given its substantial size and distance from the original building, does not constitute a normal domestic adjunct. Thus, for the reasons given above, it does not constitute an exception under paragraph 154(c) of the Framework.
17. The exception under paragraph 154(d) of the Framework is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Policy NHE5 supports replacement buildings in the Green Belt where the existing building is lawful and permanent and policy NHE6 supports the reuse and adaptation of buildings in the Greenbelt where the existing building is lawful, permanent and of sound construction and can be converted without significant or complete reconstruction.
18. However, as set out above, it is likely the waggon shed had been demolished for some considerable time prior to the construction of the appeal building. Furthermore, the resident of 3 Duxhurst Lane suggests the waggon shed was used for storage of machinery and later for keeping of chickens by the then owner of Duxhurst Farm. It seems likely, therefore, that the waggon shed was last used for the purposes of agriculture, not a residential use and so the appeal building would not be in the same use as the one it has replaced. Given the above, it does not, therefore constitute an exception under paragraph 154(d) of the Framework.
19. The exception under paragraph 154(g) of the Framework is limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would: not have a greater impact on the openness of the Green Belt than the existing development; or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority. It is not suggested the appeal building would constitute infilling, nor would it contribute to meeting an identified affordable housing need.
20. The Framework defines previously developed land as land which is or was occupied by a permanent structure, including the curtilage of the developed land...and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
21. Although the appeal building is located within the boundaries of land associated with Duxhurst Cottage, due its separation from the dwelling, I consider it is not so intimately associated with the dwellinghouse so as to lead to the conclusion that it forms part and parcel of the dwellinghouse. It is therefore unlikely it is within the curtilage of the dwellinghouse.

22. While a plan of Duxhurst, dated 11 May 1982 and other evidence referred to above points towards there having been a building at the site historically, from the aerial photographs provided, it seems likely the remains of the permanent structure had blended into the landscape. As set out above, it also seems likely the appeal building sits on land which was last occupied by an agricultural building. Consequently, I consider the land does not comprise previously developed land and so the exception under paragraph 154(g) does not apply.
23. Thus, for the reasons given above, I find that the appeal building is inappropriate development in the Green Belt.

Openness

24. The Framework sets out the purposes of Green Belt, including to check the unrestricted sprawl of large built-up areas and assist in safeguarding the countryside from encroachment. The appeal site is located off Duxhurst Lane, outside the settlement of Horley, set within a cluster of other buildings. The appellant has planted vegetation along the boundary with Duxhurst Lane and suggests further landscaping could be secured by condition.
25. However, the appeal building is a substantial building which is clearly visible from the public domain and so even mature vegetation is unlikely to screen it completely. Moreover, the openness of the Green Belt has a spatial aspect as well as a visual aspect. As set out above, it seems that very little, if any of the waggon shed remained prior to the construction of the appeal building. The appeal building has significantly increased its overall massing compared with the very limited parts of the waggon shed which may have been present prior to its construction, reducing visual and spatial openness.
26. The appellant suggests restricting the use of the appeal building by condition. However, this would not address the visual and spatial effects of the building itself. Despite the presence of nearby buildings, I consider the appeal building has a modest adverse impact on the related Green Belt purposes to check the unrestricted sprawl of large built-up areas and assist in safeguarding the countryside from encroachment, contrary to policies NHE5 and NHE6 of the DMP, which seek to protect the openness of the Green Belt and the relevant expectations of the Framework.

Other considerations

27. The appeal building provides additional storage space to the occupants of Duxhurst Cottage, which is a benefit to which I afford modest weight.
28. The appellant has drawn my attention to applications DC/19/1381, DC/18/2082, MO/2019/1257 and MO/2017/0416. However, I do not have full details of the applications referred to. Furthermore, from the descriptions provided, the schemes appear to comprise limited additions to buildings which are of substantial construction. For example, 'installation of cladding and cart shed doors to existing barns' and 'installation of cladding and new slate roof to enclose existing barn'. I do not, therefore, consider they are comparable to the appeal scheme before me.
29. The appellant suggests that the appeal building is not development that would require planning permission. Reference has been made to a number of examples where works to buildings were held to not constitute development on the basis that they were not material to the appearance of the building as a

whole. My attention has also been drawn to *Burroughs Day v Bristol CC* [1996] EGCS 126, where it was held that, for works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole.

30. Section 55(1) of the Act sets out the meaning of development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. For the purposes of the Act, building operations include rebuilding and structural alterations of or additions to buildings. From the appellant's own evidence, so little of the waggon shed is likely to have been present that the works would have involved, as a matter of fact and degree, the erection of a new building. Consequently, the works to the appeal building are development for the purposes of the Act.
31. The appellant suggests other developments in the area have caused considerably more harm to the openness and rural charm of the area than the appeal building. However, I do not know the circumstances of their approval. While residential developments may have increased the level of activity in the local area, this does not weigh in support of the appeal scheme, which I have assessed on its own merits.
32. While the appeal building does not harm the living conditions of nearby occupants and has been constructed using materials which are sympathetic to its rural context, and which accord with the Council's Barn and Farm Conversions Supplementary Planning Guidance, these are neutral factors in my consideration of the appeal.
33. The appellant states they allow the grass to grow long in summer with wild flowers to encourage bees and butterflies. While this is likely to increase biodiversity within the site, it is not dependent upon the construction of the appeal building. Indeed, the construction of the appeal building has reduced the area available within the site for grass and flowers to grow. This does not weigh in support of the appeal.
34. Although submitted in relation to Appeals A and B, I note there is some local support for the retention of the appeal building. It is suggested that the barn acts as a privacy screen between Duxhurst Cottage and recent new building barn conversions. However, given the substantial distance between Duxhurst Cottage and the barn conversions, light, noise, activity and traffic generated by these residences is unlikely to cause harm to the living conditions of occupants of Duxhurst Cottage. I therefore afford this matter very limited weight.

Green Belt Balance

35. The Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Very special circumstances are a matter of judgement for the decision maker, not law.

36. I find that the other considerations in this case do not clearly outweigh the harm that I have identified to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist and the appeal scheme conflicts with the Framework and with policies NHE5 and NHE6 of the DMP and the development plan taken as a whole.

Appeal C: Conclusion

37. Thus, for the reasons given above, I conclude that Appeal C should be dismissed.

Appeals A & B: Section 174

Ground (f)

38. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
39. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. Since the enforcement notice requires the demolition of the building, it is clear the purpose of the notice is to remedy the breach.
40. I have considered whether there is an obvious alternative that could be achieved with less cost and disruption. However, as set out above, I have found the appeal building is not located within the curtilage of the dwellinghouse. Furthermore, as pointed out by the Council, the appeal building is located forward of the principal elevation of Duxhurst Cottage. As such, the appellant would be unable to construct a building in this location under permitted development rights set out in Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).
41. The appellant raises a number of matters relating to the planning merits of retaining the appeal building, such as neighbour amenity. While I have considered some of the appellants' points advanced under ground (f), under Appeal C above, there is no appeal under ground (a). Since the purpose of the enforcement notice is to remedy the breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f).
42. The appellants suggest prior to reinstating the waggon shed, the land contained unsightly building waste and rubbish that had been disposed of over the decades. Additionally, structural debris from the original building was removed as it was unsafe. To be required to remove all materials and debris would take it back to a state that it was not originally in, which the appellants suggest is excessive and inappropriate.
43. I appreciate the appellants may have incurred cost in removing building waste and rubbish during the course of constructing the appeal building. However, the allegation is the erection of a building. It is not excessive to require its

removal, even if some elements of a previous building have been incorporated into it, since they now form part of the new building.

44. For the reasons given above, I find the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control and so the appeal under ground (f) must fail.

Ground (g)

45. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellants advise they have no experience of the logistics involved in order to fulfil the requirements of the notice and request an additional 6 months (11 months in total).
46. The Council suggests extending the compliance period to 9 months, to account for any delays caused by needing to employ skills and labour, or delays caused by poor weather conditions.
47. While I consider 11 months to be excessive, having regard to the effect of the appeal building on the Green Belt, I consider extending the compliance period to 9 months would give the appellants sufficient time to appoint suitably skilled persons to carry out the works and for the works to be carried out.
48. As such, I consider it is reasonable and proportionate to extend the compliance period to 9 months. The appeal under ground (g) succeeds to this extent.

Appeals A & B: Conclusion

49. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice, as corrected, prior to upholding it. The appeals on ground (g) succeed to that extent.

M Savage

INSPECTOR