



Appeal Decisions

Site visit made on 17 April 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 MAY 2024

Appeal A Ref: APP/G5180/C/22/3295652

Land at Plot 16 at Milchden, Blackness Lane, Kesten Land BR2 6HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr. Sebastian Popescu against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 22 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission the installation of a wooden gate to the entrance of the field, within the Green Belt, in the approximate position marked with a blue 'X' on the attached plan.
 - The requirements of the notice are to:
 - (a) Remove from the Land the gate described in paragraph 3 above; and
 - (b) Remove all resulting debris.
 - The period for compliance with the requirements is: 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/G5180/C/22/3295653

Land at Plot 16 at Milchden, Blackness Lane, Kesten Land BR2 6HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr. Sebastian Popescu against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 22 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land, located within the Green Belt, outlined in red on the attached plan, for the storage of vehicles, equipment and other paraphernalia.
 - The requirements of the notice are to:
 - (a) Cease the use of the Land for storage of vehicles, equipment, and other paraphernalia and;
 - (b) Remove all the vehicles, equipment, and other paraphernalia from the Land and;
 - (c) Remove all resulting debris.
 - The period for compliance with the requirements is: 1 month.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).
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Formal Decision: Appeal A

1. The appeal is dismissed, and the enforcement notice is upheld.

Formal Decision: Appeal B

2. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. The development on site is the subject of two separate enforcement notices. Appeal A alleges operational development relating to the installation of a gate and

Appeal B relates to a notice alleging the material change of use of the Land for the storage of vehicles, equipment, and other paraphernalia. Although the two appeals relate to the same site with the same appellant, I have considered them on their own individual merits.

4. No ground (a) appeal has been pleaded against the operational development alleged in Appeal A or the material change of use alleged in Appeal B. As such, issues such as the impact on the openness of the Green Belt are not matters before me for consideration.
5. Since the notices have been served the appellant may have made changes on site, as well as curtailed or changed their activity. However, section 174(2)(b) of the Town and Country Planning Act (1990 Act) is worded in the past tense, and the question is whether the breaches had occurred by the date of issue of the enforcement notices. I will consider the appeals on this basis.

Appeal A on Grounds (b) and (c)

6. By suggesting that the gate has not been erected on the site, part of the appellant's case is that the breach alleged has not occurred as a matter of fact. This amounts to a ground (b) appeal. However, as the appellant also contends that he carried out works to make the gate useable, this would suggest that the works that were carried out do not constitute a breach of planning control. This ground of appeal would normally be assessed as part of a ground (c) appeal. However, to avoid the complexity of detangling the differences, I have considered them together.
7. When making an appeal on these grounds, the onus rests with the appellant to make their case. The evidence alone should be sufficiently precise and unambiguous to demonstrate that on the balance of probability, the development has not occurred as a matter of fact, or if it has, it does not amount to a breach of planning control. The appellant contends that he has used existing materials to make the gate useable so that he can access the field. However, aside from this statement, there is no substantive information detailing why the existing metal gate could not be used, and what existing materials were used to make the new gate to access the field.
8. The Council has provided a photograph that shows a metal field gate on the boundary of the site on 9 November 2021. In a subsequent photograph dated 7 February 2022, the metal field gate has been removed, and a new gate has been erected in a different position along the boundary. The new gate erected has a different design, is partly made from wood and is taller and wider than the previous gate. Based on the evidence before me, as well as my site visit, I am satisfied that, by reason of its position, height, length and degree of permanence, the gate erected on site amounts to a building operation that constitutes development for the purposes of Section 55(1) of the 1990 Act¹. As such, I am satisfied that the works as alleged have occurred as a matter of fact.
9. The erection of a gate can be 'permitted development' under Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPD0), subject to the limitations set out in Class A.1. However, the site lies within an area that is affected by the terms of an Article 4

¹ Section 55(1) of 1990 Act sets out that 'development' 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.

Direction (A4D). The A4D was introduced in January 2014 and, amongst other things, removes the right to carry out 'permitted development' granted by Class A, Part 2, Schedule 2 of the GDPO. Consequently, due to the A4D being introduced in 2014, planning permission is required for the works to erect the new gate. As no permission has been granted to erect the gate, the works carried out constitute a breach of planning control.

10. The information in the Statement of Case fails to discharge the required burden of proof and does not demonstrate that the works as alleged have not occurred, or that the works do not amount to a breach of planning control.
11. For this reason, Appeal A on grounds (b) and (c) fails.

Appeal B on Grounds (b) and (c)

12. The appellant has suggested that the Land is not being used for the storage of vehicles, equipment, and paraphernalia, which would normally be a ground (b) appeal. However, the appellant has also claimed that he has not changed the use of the Land and that the vehicles, equipment, and paraphernalia are on the Land in connection with the existing use. This would suggest that the storage of these items on the Land is in connection with the primary use and does not amount to a breach of planning control. This is a hidden ground (c) appeal. As such, I have considered Appeal B with respect to ground (b) but also ground (c).
13. From what I saw during my visit, the site is a narrow strip of largely undeveloped land in a countryside location. Due to the topography, the Land slopes downwards from front to back. There was an unmade track along one side, which was largely clear of items, but on the other side I saw several vehicles including two vans, a car and a flatbed lorry. There was also a large horse trailer, a small horse trailer, some plant equipment, a touring caravan, stacked car tyres and wooden pallets as well as other miscellaneous items. A polytunnel had been erected towards the top of the Land and a glass greenhouse was also present towards the back.
14. The presence of a glasshouse and polytunnel together with the appellants claim of planting trees and plants would point to a horticultural use, which would accord with the meaning of 'agriculture' as set out in section 336(1) of the 1990 Act². However, the information provided with the appeal is limited and provides no information on the scale and nature of the agricultural use being carried out. Without a clear understanding of the scale and nature of the agricultural use, it is not possible to establish if the storage of the vehicles, equipment and other paraphernalia can be regarded as an incidental or ancillary activity associated with the primary use for agriculture.
15. When making an appeal on these grounds the onus of proof rests with the appellant. The information in the Statement of Case is limited, imprecise and ambiguous and fails to discharge the required burden of proof. The breach as alleged has occurred as a matter of fact and there is insufficient evidence to demonstrate that the storage of vehicles, equipment, and paraphernalia on the Land does not constitute a breach of planning control.
16. An appeal on ground (b) and hidden ground (c) therefore fails.

² The list is not exhaustive, but it includes 'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.'

Conclusion

17. For the reasons given above, I conclude that Appeal A and Appeal B should not succeed, and I shall uphold the enforcement notices.

M. P. Howell

INSPECTOR