



Appeal Decision

Site visit made on 29 May 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/P2365/C/23/3324163

174 Gravel Lane, Banks, Southport, Lancashire PR9 8BX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Ben Brownley against an enforcement notice issued by West Lancashire Borough Council.
 - The notice was issued on 11 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a storage the building identified by a black edging and cross hatched on the attached plan.
 - The requirements of the notice are:
 - (i) To dismantle the building.
 - (ii) Remove from the land all the building material arising from the dismantling of the building including the concrete which had constituted the base of the building.
 - The period for compliance with the requirements is three 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).
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) The deletion of the word "the" between "storage" and "building" in section three of the enforcement notice – the breach of planning control alleged.
 - 2) The deletion of three (3) months and the substitution of six (6) months as the time for compliance in section six of the enforcement notice.
2. Subject to the correction and variation, 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.

The Enforcement Notice

3. There is an erroneous "the" in the allegation. Since this is evidently a typographical error which does not affect understanding of the allegation, I have deleted it, without injustice to either party.

Preliminary Matters

4. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built. Nevertheless, I do have the power under section 177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice. I am also required to consider whether there is an obvious alternative which could overcome the

planning difficulties, at less cost and disruption than total removal as currently required by the notice.

5. The appellant has not sought to demonstrate that planning permission should be granted for the building as built, but that permission should be granted for the building with a lower ridge height. Plans have been provided.
6. Since there is an appeal on ground (a) and the proposed alternative forms part of the matters constituting the breach of planning control, it is open to me, and I have considered the appeal based on the building as proposed.
7. The appellant previously submitted a planning application for a replacement storage building which was subsequently refused by the Council and dismissed on appeal¹. It is evident that the previous Inspector considered the merits of the same building proposed in this appeal. Accordingly, it is against this background that I have considered this appeal.

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

8. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and development plan policy and the effect on the openness of the Green Belt.
- The effect of the development on flood risk; and
- if the development is inappropriate, 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 necessary to justify the development.

Reasons

Whether inappropriate development

9. Policy GN1 of the West Lancashire Borough Council Local Plan 2012-2027 Development Plan Document (Local Plan) sets out that development proposals within the Green Belt will be assessed against national policy and any relevant Local Plan policies.
10. Paragraph 154 of the Framework indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt except in a number of clearly defined circumstances, including at 154 d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
11. I note the discussion about lawfulness in the appellant's statement however, no evidence has been provided to establish what was the lawful use of the previous building. Nevertheless, I have no reason to conclude other than as the previous Inspector, that the proposed building would be for similar purposes ancillary to the residential property at 174 Gravel Lane, as the previous building.

¹ APP/P2365/W/22/3294141

12. For the purposes of paragraph 154 d) determining whether the proposed building is materially larger does not require consideration of the visual impact of the proposal or any impact on openness, it is primarily an objective exercise by reference to size.
13. I have not been provided with the plans of the original building (glasshouses), or those before the previous Inspector however, it seems from the Council's submissions that the previous glasshouses had an overall height of approximately 3.5m.
14. The appellant stated that the proposed building would be 2.8m to ridge height and its volume would be 18% greater than the previous glasshouses. Accordingly, whilst the building would be lower in height, it would by all metrics be materially larger when considering its volume. It would therefore fail to meet the exception at paragraph 154 d) of the Framework.
15. I acknowledge the appellant's reference to Policy GB2 of the Councils SPD² which sets out the criteria which a proposal for the replacement of an existing non-residential building within the Green Belt should satisfy, including amongst others, that the total volume of the replacement building should not be more than 20% larger than the volume of the building it replaces. Further, that the replacement building should not materially harm the openness of the Green Belt through excessive scale or bulk or by virtue of its location.
16. In the justification it is stated that the Council considers that a replacement building which is up to 20% larger than that which it replaces *may* [my emphasis] be appropriate in the Green Belt and acknowledges that a replacement building may be judged to have an unacceptable impact on the openness of the Green Belt compared with the existing building, even if the volume limits have not been breached.
17. As already stated above, there is no requirement in national policy to consider the impact on openness in determining whether the proposed building is materially larger. Accordingly, and since the SPD is guidance, it does not alter my view.
18. The appellant also considers that the proposal meets the exception at paragraph 154 g) of the Framework. This states that limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing uses (excluding temporary buildings) would not be inappropriate development subject to not having a greater impact on the openness of the Green Belt than the existing development.
19. Land in built-up areas such as residential gardens is excluded from the definition of previously developed land. The previous Inspector concluded the site was excluded from the definition of previously developed land on this basis.
20. There is no definition in the Framework of built-up areas. The previous Inspector stated that the site is located within a linear cluster of built form, and that the appellant stated that the proposed building is located on land used as domestic garden, which they now dispute.

² West Lancashire Borough Council Supplementary Planning Document Development in the Green Belt October 2015

21. However, the appellant stated in their submissions that the application site is surrounded on all four sides by development. To the north and west there is a static caravan park, to the east are properties on Gravel Lane, and to the south are long established and very substantial commercial buildings belonging to the neighbouring property. They concluded that the site is thus entirely enclosed and separated from the open countryside.
22. The appellant stated that The Planning Inspectorate determined that the planning appeal could not be determined by way of a householder appeal, thereby confirming the fact that it was not in the residential garden. However, this is a procedural matter which has no bearing on my assessment.
23. Accordingly, and in the absence of substantive contrary evidence regarding the use of the land, I have no reason to take a different view to the previous Inspector. The proposed development does not fall to be considered within the exception at paragraph 154 g) of the Framework. Even if I am wrong, the requirement in paragraph 154 g) is that the new building should not have a greater impact on the openness of the Green Belt than the existing development.

Openness

24. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt is the absence of development and has been found by the courts to have a spatial as well as visual aspect.
25. The appellant referred to the case of *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin) where the judge indicated that rather than treating any change as having a greater impact on openness of the Green Belt, the correct approach is to consider the impact or harm, if any, wrought by the change. Further, that whether any change will have an adverse impact, and so cause harm to openness, might depend on factors such as the scale of the development, its locational context, and its spatial and/or visual implications.
26. The Supreme Court in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council* (Appellant) [2020] UKSC confirmed that the matters relevant to openness in any particular case are a matter of planning judgement, not law.
27. Details of the glasshouses are limited to an aerial image. However, as already stated, the proposed building is materially larger and therefore in spatial terms, would reduce openness. The site is surrounded by development on all sides and wider public views are largely limited to glimpses down the driveway, accordingly in visual terms the effect on openness would be limited. In this context, whilst overall the harm to openness would be limited, the proposed development would have a greater impact on the openness of the Green Belt than the existing (previous) development.

Flood risk

28. The appellant's evidence indicates that the appeal site is located within flood zone 3a. Policy GN3 of the Local Plan requires development to satisfy the sequential, and if necessary, the exceptions test as set out within the National

Guidance, for proposals within Flood Zones 2 and 3 on sites that have not been allocated within the Local Plan.

29. There has been no material change in circumstances since the previous appeal decision. The appellant's case is essentially that the previous Inspector was wrong to disregard two appeal decisions, where Inspectors had concluded that a sequential test was not required. Moreover, that the submitted flood risk assessment³ (FRA) included proposed measures that could be secured by condition.
30. As set out in Planning Practice Guidance (PPG) the aim of the sequential test is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. It is also stated, that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.
31. In the appeal decision concerning 339 Blackgate Lane⁴ an FRA was provided, and it is stated that "The EA consider that they are satisfied that the development would be safe without exacerbating flood risk elsewhere if the proposed flood risk mitigation measures are implemented. Furthermore, no objections are raised, subject to the imposition of conditions, concerning drainage of the development."
32. In the Riverside Caravan Park case⁵ for which I have only been provided with the costs decision, it seems there had been no substantive objections to the scheme on flood risk.
33. As set out by the previous Inspector, the Council outlined its concerns with the approach of the FRA, alongside other concerns, namely that details of the drainage design and residual flood risk measures have not been provided. Indeed, it is stated in section eight of the FRA that in respect of the surface water strategy, the recommendations are preliminary and should be developed/investigated further during the detailed design stage. And, in section 10 flood proof measures are set out, but there is no indication of what would be incorporated.
34. In the absence of explanation, or suggested wording, I am not persuaded that conditions could or should be used where no specific detail has been provided.
35. Accordingly, regardless of the outcome of any sequential test, the concerns relating to the FRA form the basis for this main issue unlike the appeal decisions referred to.
36. As the previous Inspector found, the presence of flood defences does not mean that a proposal is safe, only that while the defence is maintained the risk is reduced. Therefore, regardless of the area currently benefiting from flood defences or being identified as being at very low risk of flooding, the evidence before me fails to demonstrate that the development is flood resistant and resilient, incorporates sustainable drainage systems if appropriate or that any residual risk could be safely managed. In the absence of further information, I am concerned that the proposal would pose an unacceptable risk to flooding.

³ Flood Risk Assessment & Drainage Strategy, Flood Flow Ltd, 2 December 2021

⁴ APP/P2365/W/20/3261041

⁵ APP/P2365/W/18/3214555

37. For the reasons given, flood risk at the site has not been adequately dealt with. The proposed development would therefore conflict with Policy GN3 of the Local Plan and the Framework, which together seek to ensure that development does not result in unacceptable flood risk or drainage problems.

Other considerations

38. The appellant has not sought to demonstrate that there are considerations that may weigh in favour of the proposal.

Green Belt Balance

39. Paragraph 152 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on at paragraph 153 to require that substantial weight should be given to any harm to the Green Belt and very special circumstances 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.
40. I have found harm to the Green Belt by way of inappropriateness and in respect of flood risk. There are no considerations raised in support of the development to 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. Therefore, the development conflicts with the Green Belt protection aims of Policy GN1 of the Local Plan and the Framework.

Conclusion on ground (a)

41. For the above reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

42. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the notice requires the building to be dismantled and all subsequent materials to be removed, I find its purpose is to remedy the breach of planning control.
43. Under section 173(4)(a), the purpose of remedying the breach may be achieved in a number of ways, including restoring the land to its condition before the breach took place.
44. The appellant's case under ground (f) I have already considered in detail under ground (a). However, in their final comments, in the absence of substantive explanation, it seems that the appellant is arguing that to restore the land to its previous condition, they would have to erect the previously existing glasshouses.
45. However, the glasshouses would have been demolished and the site cleared to erect the building subject of this appeal. Accordingly, the land would have been devoid of buildings when the building was erected, that was its previous condition. In any event, in the absence of contrary evidence, the erection of the glasshouses would constitute operational development requiring planning permission.

46. Since it is not excessive, in order to remedy the breach of planning control, to require the removal of the building and resulting materials, the appeal on ground (f) fails.

The appeal on ground (g)

47. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers six months would be a reasonable period, based on the need to find an alternative site for the equipment housed in the building, which will include applying for planning permission, moving the equipment, and demolishing the building.
48. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal “stops the clock” and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the reasonable period for compliance would be.
49. Given the scale of the building and the extent and nature of the stored equipment, even if account is taken of the need to remedy the harm, the requirement to undertake all the works within three months would place a disproportionate burden on the appellant.
50. I conclude that the period for compliance should be extended to six months. A period of six months would be a proportionate response to the breach of planning control. To this extent, the appeal on ground (g) succeeds.

Conclusion

51. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR