



Appeal Decisions

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2024

Appeal A Ref: APP/Q4625/C/23/3325371

Appeal B Ref: APP/Q4625/C/23/3325372

Land to the rear of Forge House, Table Oak Lane, Meer End, Solihull CV8 1PZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr & Mrs Gary Tasker and Appeal B by Mr Gary Tasker against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The notice was issued on 7 June 2023.
 - The breach of planning control as alleged in the notice is (i) the material change of use of the land to a use for purposes ancillary to the domestic residential use of Forge House, and (ii) unauthorised operation development comprising: the erection of a single-storey detached building in the approximate position shown in orange on the attached plan; the formation of a hard surfaced parking area in the approximate position shown in yellow on the attached plan; and the construction of raised planting beds on the land.
 - The requirements of the notice are:
 - i. Demolish/dismantle and remove the single-storey detached building in the approximate position shown in orange on the attached plan;
 - ii. Break-up and take-up the hard surfaced parking area in the approximate position shown in yellow on the attached plan;
 - iii. Dismantle and remove the raised planting beds from the land;
 - iv. Remove the materials arising from compliance with steps (i) to (iii) above from the land, and;
 - v. Cease the use of the land for purposes ancillary to the domestic residential use of Forge House.
 - The period for compliance with the requirements is: 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f), (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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(c), (f), and (g) of the Town and Country Planning Act 1990 (as amended).
-

Decisions

1. It is directed that the enforcement notice is corrected by:
 - In section 3 (i) the deletion of the word “ancillary” and substitute instead the word “incidental”.
 - In section 3 (ii) the deletion of the word “operation” and substitute instead the word “operational”.
 - In section 5 (v) the deletion of the word “ancillary” and substitute instead the word “incidental”.

2. It is directed that the enforcement notice is varied by:
 - In section 6 the deletion of the words “6 months” and substitute instead the words “9 months”.
3. Subject to the above corrections and variation, the appeals are dismissed and the enforcement notice is upheld. In respect of Appeal A, planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

The Notice

4. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended, or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
5. The notice alleges the “*material change of use of the land to a use for purposes ancillary to the domestic residential use of Forge House*”. Where the sole primary use of a planning unit is use as a dwellinghouse, the use of the land within the planning unit for associated activities, such as parking cars or storage, will normally be incidental to the primary residential use. Accordingly, I find that the correct description would refer to the use of the land for purposes “*incidental to the domestic residential use of Forge House*”.
6. The notice has been interpreted on the basis that a residential use is alleged, along with associated operational development. Given the way and manner in which arguments have been advanced by the parties, it is clear that the notice was correctly interpreted and has not resulted in confusion. I am therefore satisfied that the allegation, and associated requirement, can be corrected without causing any injustice to any party. Similarly, a typographical error in section 3 (ii) which should refer to “operational” development can also be corrected without causing injustice.

Preliminary Matters

7. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The main parties confirmed at the hearing that, given the parts of the Framework most relevant to the appeals have not substantively changed from the previous iteration, this revision has not had any relevant implications for the appeals. I have determined the appeals accordingly.

Appeals A and B on ground (c)

8. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control.
9. The appellants contend that the appeal site forms part of the curtilage of Forge House, and consequently there has been no material change of use of the land as alleged. Whether the site falls within the curtilage of Forge House also has significant implications regarding the operational development attacked by the notice. This relates to whether the development benefits from deemed planning permission granted by virtue of permitted development rights set out in

Schedule 2, Part 1, Classes E and F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

10. Classes E and F permit, subject to various conditions and limitations, the erection of a building or enclosure and the provision of hardstanding which are incidental to the enjoyment of a dwellinghouse. However, Classes E and F of the GPDO only permit developments which are within the "*curtilage of a dwellinghouse*". It was agreed at the hearing that the single-storey building does not accord with all the limitations set out under Part E.1 of the GPDO, including exceeding 4 metres in height, and therefore the building represents a breach of planning control in any event.
11. I now turn to whether the appeal site forms part of the curtilage of Forge House. The term 'curtilage' is not defined in the 1990 Act nor in any other legislation, including the GPDO, and its meaning and application are derived from court judgements. Curtilage defines an area of land in relation to a building and is not a use of land. It must also not be confused with the planning unit, which may cover the same area on the ground although that will not always be the case.
12. The extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to the normal principles of public law. There are several authorities on the matter of curtilage, which I will set out below.
13. *Sinclair-Lockhart's Trustees*¹ established that land may be regarded as being within the curtilage of a building if "*...it serves the purpose of the house or building in some necessary or reasonably useful way*". In *Methuan-Campbell*² it was established that, to be curtilage, land must be "*...so intimately associated with [the building] as to lead to the conclusion that the former in truth forms part and parcel of the latter*". In the case of *Burford*³ it was identified that the relevant factors were '(i) the physical layout of the building and structure; (ii) the ownership past and present and (iii) the use or function of the land or buildings, past and present'.
14. *Blackbushe Airport Ltd*⁴ reinforced that the approach to be taken was to ask not whether the land and building comprise part and parcel of the same unit, but whether the land is part and parcel of the building as a matter of fact and degree. Andrews LJ found in the Court of Appeal that "*on a proper reading of [Methuen-Campbell], the conclusion that the land and building together constitute an integral whole is the consequence of applying the intimate association...test*".
15. Forge House previously formed part of Brockhill Farm and was initially a granny annexe following the grant of planning permission in 1991⁵. It subsequently became its own separate dwelling following the implementation of planning permission PL/2015/52419/PPFL ("the 2015 permission"), forming part of a pair of semi-detached dwellings with the property known as Brockhill House.

¹ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195

² *Methuan-Campbell v Walters* [1979] 1 QB 525

³ *Burford v SSCLG and Test Valley BC* [2017] EWHC 1493 (Admin)

⁴ *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359

⁵ Council Reference: PL/1991/01604/FULL

16. Forge House is set back from the road, with access provided through a gated entrance directly off Table Oak Lane. The front of the property includes a gravelled driveway and parking area, with the gravelled driveway continuing to the western side of the dwelling providing vehicular access to the rear.
17. Once to the rear of the property the gravelled driveway leads into the parking area that is subject of the enforcement notice. Beyond the gravelled parking area are the detached building and raised planting beds which are also attacked by the notice. Immediately to the rear of the dwelling is a patio area which includes a hot tub and outdoor seating area. The patio area leads directly onto a large expanse of grassed land which has been mowed and maintained. Although the gravelled parking area, detached building, raised planting beds and small area of grassed land has been enclosed by a post and rail fence, at the time of my visit there was otherwise no physical separation between the patio area to the rear and the rest of the appeal site.
18. Mrs Tasker stated at the hearing that she had been unsure where the curtilage of the property extended to, particularly as curtilage had not been referred to in any previous documentation including planning applications and land registry details. Nevertheless, it remained her view that the parking area, detached building and raised planting beds were situated within the curtilage of Forge House. The Council's position was that the development has taken place on land that was previously an open field or paddock, and outside of the residential curtilage of Forge House.
19. Given the size of the overall plot, understanding how the land has been used is vital in helping determine the extent of the curtilage. Both parties submitted a range of historic aerial photographs from between 1999 and 2022. All of the photographs dated between 1999 and 2013 show the appeal site to be an open field or paddock, with there being no evidence of any residential use of this land. During this period there also appears to be a defined curtilage of the dwelling(s) with a boundary treatment running in close proximity to the rear of the building itself, approximately to the extent of the existing rear patio area.
20. The aerial photographs from 2016 and 2017 show building works taking place to the property, which are understood to be the works approved under the 2015 permission. During this period any previous boundary treatments appear to have been removed and much of the land is bare due to vehicles and machinery crossing the land in connection with those building works.
21. The land registry documents detail that the appellants purchased the property in June 2018. An aerial photograph provided by the appellants from shortly before that date in April 2018⁶ appears to show the property following the completion of the building works. At this point a boundary treatment is clearly visible a short distance beyond the rear elevation of the property, which appears to enclose a shallow garden area to the rear of the dwelling. The appeal site, which covers the remainder of the land to the north of this boundary treatment, retains the appearance of an open field or paddock, with no evidence of any residential use.
22. This is further supported by the sales particulars for Forge House from 2018 which includes photographs showing a timber post and rail fence a short distance from the rear of the dwelling, with an open field beyond. The

⁶ Appendix K of the appellants hearing statement

description of the rear garden given in the sales particulars is *"To the rear of the property there is a lawned garden having block paved patio"* and *"fence leading to paddock with mature trees and open aspect"*. At the hearing the appellant also provided a drawing⁷ that was submitted as part of the application⁸ to discharge conditions 3, 4, 5, 6 and 8 on the 2015 permission. This drawing showed the same layout with the rear boundary annotated as *"post and rail fence to edge of garden"*.

23. At the hearing Mrs Tasker stated that since purchasing the property in 2018 they had mowed and maintained the entirety of the land. Whilst I have no reason to doubt this statement, it does not mean that all of the land falls within the curtilage of the dwelling. While the whole site is within the same ownership, the appeal site lies beyond the patio and small area of lawn which had an intimate association with the dwellinghouse. The open field or paddock was delineated from the dwellinghouse by post and rail fencing and although physical enclosure is not an essential element of determining the extent of the curtilage, it is part of the consideration of physical layout. Overall, I find that prior to the development taking place the appeal site was of an agricultural appearance and function rather than domestic, and there is no evidence that the appeal site served a purpose associated with the dwellinghouse in some reasonably necessary or useful manner.
24. The appellants have also highlighted several OS plans dating from 1905 to 2023, some of which include black lines across different parts of the appeal site. The appellants contend that these lines demonstrate the curtilage of the dwelling at the various points in time. However, these lines could simply delineate field boundaries or other structures that may have been present at the time. In any case, curtilage is not fixed as its physical extent can change at any time. The most important thing therefore is to establish what the extent of the curtilage was at the time of the works taking place. Consequently, the OS plans are of little assistance to the appellants, and they do not outweigh or counter the significant evidence which indicates that the appeal site did not form part of the residential curtilage prior to the development taking place.
25. I therefore conclude that the appeal site does not form part of the curtilage of Forge House, and that the use of the land for purposes incidental to the domestic residential use of Forge House constitutes a material change of use. No permitted development rights exist as Schedule 2, Part 1 of the GPDO does not apply. Accordingly, the matters stated in the notice constitute a breach of planning control and the appeals on ground (c) therefore fail.

Appeal A on ground (a) and the deemed planning application

26. There is no dispute that the appeal site lies within the Green Belt. The sole matter of dispute is whether the development constitutes inappropriate development in the Green Belt. The Council confirmed at the hearing that no other harm is identified. Consequently, 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, including an assessment of its effects on the openness of the Green Belt; and

⁷ Drawing No 06L dated August 2016

⁸ Council Reference: PL/2017/02986/DIS

- If the development 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 development.

Reasons

Whether the development is inappropriate development

27. The Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy P17 of the Solihull Local Plan (adopted December 2013) (SLP) confirms that the Council will not support inappropriate development in the Green Belt. The SLP policy is therefore largely consistent with the Framework.
28. The Framework directs that development within the Green Belt is inappropriate, with the exception of the types of development set out in paragraphs 154 and 155. The appellants confirmed at the hearing that only the detached building was considered to fall within any of the listed exceptions, referring to paragraph 154 (a) which states that the construction of new buildings for agriculture and forestry would not represent inappropriate development. Consequently, the parties agree that the remainder of the development which is subject of the deemed planning application represents inappropriate development in the Green Belt. I concur with that position.
29. The appellants stated that the building is an agricultural building due to it being required on connection with maintaining the land. This however contradicts the appellants written submissions which specified that the building was a domestic outbuilding that was incidental to the residential use of Forge House.
30. It was patently clear from my site visit that the building was not in any form of agricultural use and was indeed a domestic outbuilding being used in connection with Forge House. The building was split into two sections, with one being used for the storage of various domestic items including tools, a ride on mower, quad bike, and ladders. The second section was laid out as a games room and included a pool table, refrigerator, and seating. Accordingly, the building does not meet the exception under paragraph 154 (a) of the Framework and is inappropriate development.

Openness

31. Paragraph 142 of the Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. The Council considers that the development conflicts with this fundamental aim and erodes the openness of the Green Belt.
32. It is apparent that the appeal site was previously an area of open grassed land which was largely free from any built development. The development consists of the material change of use of the land to a use incidental to the enjoyment of Forge House, with the associated erection of a detached building, creation of a gravelled parking area, and raised planting beds. Considerations of openness have both visual and spatial aspects. This means that the absence of visual

intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result.

33. The detached building is a substantial structure, which along with the gravelled parking area, occupies a significant area of land that was previously free from development. Therefore, given the scale of the development and the obvious increase in both footprint and volume compared to what previously existed on the site, the development has the unavoidable consequence of resulting in a significant reduction in the spatial openness of the Green Belt.
34. Despite the spatial reduction in the openness of the Green Belt, there would be a much more limited visual reduction in openness. The appeal site is located to the rear of Forge House and the surrounding fields are enclosed by boundary hedging and trees. As a result, whilst views of the development are possible from both Table Oak Lane and Holly Lane, these views are intermittent with only partial glimpses possible. It is also likely that views of the development are possible from the adjacent residential property Brockhill House.
35. Overall, given that there are only limited views available of the appeal site and development from public vantage points, it makes only a minimal contribution to the visual aspect of openness. The development therefore only has a minor harmful impact on this aspect of openness. Nevertheless, for the reasons set out above the development inevitably results in a significant reduction in the spatial openness of the Green Belt.

Green Belt Purposes

36. Paragraph 143 of the Framework states that the Green Belt serves five purposes. One of those purposes is to assist in safeguarding the countryside from encroachment. Although the development is located to the rear of an existing dwelling, given the scale of the detached building and gravelled parking area along with its associated vehicle movements, I find that the development has an urbanising effect on what was previously an open field or paddock. This runs contrary to the purpose of safeguarding the countryside from encroachment.
37. Consequently, the development fails to assist in safeguarding the countryside from encroachment. Whilst the harmful effect of the encroachment would be limited due to the existing development adjacent to the site, there would nevertheless be some limited harm arising to the purpose set out under paragraph 143 (c) of the Framework.

Other Considerations

38. The appellants have stated that they are prepared to implement a landscaping scheme that could be secured by condition. Two schemes⁹ were proposed, both involving the erection of a timber fence that would enclose the detached building and parking area along with an area of lawn. The main difference between the two schemes submitted is that the proposed fence in the scheme dated 4 July 2024 would be set further away from the rear elevation of Forge House than originally proposed, at around 20 metres.
39. Both schemes propose the erection of a fence (including two gates) of a design to be approved by the Council, along with further landscaping along the fence

⁹ Appendix X of the appellants Hearing Statement and Drawing No: GTT1 dated 4 July 2024

line. The appellants consider that this would both clearly define the extent of the residential curtilage and provide further screening and landscaping enhancements. Whilst I acknowledge that a physical boundary would provide clarity to the appellants, any benefits in terms of reducing the visual intrusion on the openness of the Green Belt would be negligible. The schemes would also not overcome the significant reduction in the spatial openness of the Green Belt identified, or the harm caused to the purpose of safeguarding the countryside from encroachment.

40. It is further suggested by the appellants that the height of the detached building could be reduced to 4m so that it complied with height permitted under Part 1, Class E of the GPDO. Similarly, any benefits of this would be extremely limited and would not overcome the identified Green Belt harm.
41. The appellants also contend that the loss of the parking area would result in vehicles belonging to occupants of Forge House spilling out on to the adjacent highway, due to limited space being available on the frontage for parking and manoeuvring. It is the appellants view that the parking of vehicles on Table Oak Lane would be substantially more visually intrusive than the existing parking area to the rear of Forge House.
42. Mrs Tasker confirmed at the hearing that the occupants of Forge House had five vehicles in total. Whilst I accept that manoeuvrability within the site would be difficult, in my view it would be entirely possible for five vehicles to be accommodated within the parking area to the front of the property. Any difficulty could be further negated by utilising the gravelled driveway to the west side of the dwelling which, should the notice be upheld and the rear parking area removed, would be unlikely to be needed for regular vehicular access to the rear of the property. I therefore consider that the loss of the rear parking area would be unlikely to result in vehicles spilling out onto the highway on a regular basis. As a result, I give this consideration limited weight.
43. Finally, the appellants consider that the building is necessary to store their various items and belongings and that it is situated in the least harmful location. I appreciate the need to securely store their personal effects including garden machinery and tools. However, it has not been sufficiently demonstrated that there are no other ways of providing such secure storage, either within the existing dwelling itself or through an alternative proposal which would cause less harm to the Green Belt. I therefore give this consideration limited weight.

Planning Balance and Conclusion

44. I have found the development to be harmful to the Green Belt by reason of inappropriateness and loss of openness. Paragraph 153 of the Framework states that substantial weight is to be given to any harm to the Green Belt. '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. Apart from the Green Belt, no other harm arises in this case.
45. Against this harm, it is necessary to balance the other considerations. The need for the development to provide the occupants of Forge House with additional parking and storage space, and the proposed implementation of a landscaping scheme, each attract only limited weight. Even when taken together, these

other considerations do not clearly outweigh the substantial weight I have given to the harm caused to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.

46. For the reasons set out above, the development conflicts with the development plan when read as a whole, and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all other matters raised, I therefore conclude that the appeal on ground (a) should be dismissed, and planning permission be refused on the deemed application.

Appeals A and B on ground (f)

47. For the appeals to succeed on this ground, I need to be satisfied that the steps required to comply with the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
48. It is clear from the requirements of the notice that its purpose is to remedy the breach of planning control. The appellant has suggested lesser steps which in their view would clearly define the residential curtilage, including the erection of a fence and two gates and the implementation of a landscaping scheme. However, these steps would not remedy the breach. In any event, I have considered the suggested lesser steps as part of the ground (a) appeal and for the reasons already outlined I concluded that these steps would not remedy the harm identified.
49. Accordingly, the appeals on ground (f) fail.

Appeals A and B on ground (g)

50. The appeals on ground (g) are that the time given to comply with the requirements of the notice is too short. The notice specifies a period of six months after the notice takes effect.
51. The appellants argue that the compliance period is too short as alternative storage facilities would need to be found, or planning permission obtained for a new building, to store the items currently contained within the single-storey detached building. It is also considered that further time would be needed to re-accommodate the parking of vehicles.
52. I acknowledge that the removal of the detached building and subsequent relocating of the items contained within it will result in disruption to the appellants. However, a period of twelve months would be tantamount to a temporary planning permission. It would not provide the necessary balance between the public interest in securing expeditious compliance with the notice and the private interests bound up in the development.
53. The Council confirmed at the hearing that they would be willing to accept an extension to nine months. This would, in my view, strike the appropriate balance and represent an appropriate and reasonable compliance period. I shall therefore extend the compliance period to nine months. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

54. For the reasons given above I conclude that the appeals do not succeed, save for ground (g). I have upheld the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Cobb	Richard Cobb Planning
Tracey Tasker	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Lucy Duffy	Enforcement Team Leader
Stephen Wilkinson	Senior Enforcement Officer

DOCUMENTS SUBMITTED AT THE HEARING

1. Drawing No 06L titled "Proposed Site Plan" dated August 2016