



Appeal Decisions

Site visit made on 6 August 2024

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2024

Appeal A Ref: APP/A1910/C/22/3313454

Appeal B Ref: APP/A1910/C/23/3314025

Land on the east side of Cupid Green Lane, Hemel Hempstead, Herts.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Dana Vatamaniuck against enforcement notices issued by Dacorum Borough Council.
- The notices were issued on 18 November 2022.
- In **Appeal A**, the breach of planning control as alleged in the notice is 'the erection of buildings on the Land'.
- The requirements of the notice (**Notice A**) are to:
 - (a) Demolish to ground level Buildings A and B outlined in blue on the attached plan.
 - (b) Remove from the Land all materials arising from completion of 5(a) above.
 - (c) Remove from the Land all foundations of Buildings A and B. (d) Restore the ground on which Buildings A and B are sited to grass.
- The period for compliance with the requirements is: 7 months.
- Appeal A is proceeding on the ground set out in section 174(2)(a) 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.
- In **Appeal B**, the breach of planning control as alleged in the notice (**Notice B**) is 'Without planning permission, the change of use of the Land from agricultural to a mixed use of agriculture, domestic, and commercial uses not reasonably associated with agriculture'.
- The requirements of the notice are to:
 - (a) Cease the use for domestic purposes and commercial uses not reasonably associated with agriculture.
 - (b) Remove entirely and permanently from the Land: (i) All domestic and household type items including, though not limited to, electrical goods, electrical cables, cooker, household cooking utensils, kitchen type worktops and domestic storage units, household furniture, flooring. (ii) Toilet, shower, toilet waste pipes and all below ground means of toilet waste disposal and/or storage. (iii) Log burning stove and chimney. (iv) Ground level timber decking in external areas. (v) Electrical generator equipment and parts thereof, Lawnmowers and parts thereof, oil containers, liquid containers, gas bottles. (vi) Loose timber and firewood.
 - (c) Remove from the Land, the close boarded timber fence (including panels and supporting posts) on the external perimeter of the Land on the attached plan.
- The period for compliance with the requirements is: 4 months.
- Appeal B is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. **Appeal A:** is dismissed, Notice A is upheld, and planning permission is refused for the erection of buildings on the Land on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. **Appeal B:** is dismissed and Notice B is upheld.

Procedural Matters

3. Although separate appeals, as the outcome of Appeal A is partly dependent on my conclusion on Appeal B, I have dealt with the latter first. I have used the references to Buildings A and B as identified in Notice A, in both appeals.

Appeal B - Ground (b)

4. An appeal on ground (b) is that the matters alleged in the notice have not occurred. The appellant has pleaded ground (b) only in respect of Notice B and the alleged change of use.
5. To succeed on ground (b) the appellant must prove that the alleged material change of to a mixed use has not occurred. The burden of providing relevant facts under this ground rests with the appellant, and the test of the evidence is the balance of probability.
6. Amongst other things, the site accommodates three buildings. At the time of my site inspection, a smaller building (not subject of either appeal) was used for the housing of 2 chickens. Boxed planters designed for growing were present in some external parts of the site. However, only limited growing was taking place at that snapshot in time.
7. Building A is a metal framed building covered in opaque white plastic sheeting. It has a wooden floor and is arranged with domestic style kitchen units, a cooker, sink, microwave oven, fridge and stored kitchenware. A WC, shower unit and food store were present in one corner. At the time of my visit an armchair faced a large TV and games console. A solid fuel burner was positioned towards the middle of the building.
8. Building B is a timber-framed building with a pitched roof and raised wooden floor. The walls are clad in timber boarding with some sections of the internal wall area insulated. The only opening is a doorway with a domestic-style uPVC door. The building was in use for the storage of various items including furniture, ladders, timber, paint, a domestic internal door, building materials and electrical fittings. The building also accommodates various power tools, saws, drills and the like.
9. Elsewhere, the site contained workbenches, gas bottles, fuel cans, numerous motor oil containers, generators, mowers, engine parts, metal frames, and timber boarding over parts of the external ground area. The site is partly enclosed by a domestic-style close-board timber fencing.
10. The appellant states that all buildings and items are used for agricultural purposes. He highlights that he planned to produce his own food but have an abundance to sell or donate to food banks. I accept that the use of the external growing frames, planters and kept fowl could fall within the Town and Country Planning Act 1990 s336 definition of 'agriculture'.
11. However, alongside the content and layout of building A, the evidence strongly indicates that its primary purpose is to provide for domestic accommodation. The interior layout of the building appears primarily concerned with the domestic functions of cooking, washing, shelter and comfort.
12. Building A does not appear as a typical agricultural building for plant growing. Although its construction of plastic sheeting laid across a framework is

comparable to polytunnel-type buildings visible or approved elsewhere on the surrounding land, the opaque plastic sheeting prevents the majority of natural light from permeating the interior of the building.

13. I recognise that the sheeting would also prevent UV light from burning plants within, as asserted by the appellant; however, the resultant low levels of natural light within it are certain to limit plant growth capacity when compared to the more transparent sheeting used elsewhere. Notwithstanding, there is little evidence of any agricultural production taking place there with the majority of the building being arranged as living space.
14. In building B, the use and/or storage of various domestic furniture, tools and materials has little apparent or suggested relevance to the activities within the s336 definition of agriculture. Furthermore, as with the facilities in building A, their extent is significantly greater than the areas given over to any agricultural production. I do not dispute that agriculture is a use of the site, but the appellant has not demonstrated that, on the balance of probabilities, the site is not also used for domestic purposes.
15. Similarly, the appellant has failed to give any precise or unambiguous explanation for the presence on the site of machinery parts, petrol-driven power tools, generators, other tools and oil containers in the external areas and lying on and about benches/tables to the rear of the site. Those items appear more commercial than agricultural in nature, and that impression is reinforced by their number and sometimes duplication, as in the case of the chainsaws and mowers. Thus, the appellant has not demonstrated that the mixed use of the site does not include a commercial component.
16. The appellant has also failed to demonstrate that the domestic and commercial activities taking place on the site could be incidental to agriculture. Given the limited area of agricultural production and the scale and range of residential and business items within the buildings and elsewhere about the site, the domestic and commercial uses are likely to be primary uses, meaning that the site is probably in a mixed use as alleged.
17. For the above reasons, on the balance of probability, the evidence leads me to the conclusion that the alleged mixed use of the site was taking place on the date that Notice B was served.

Conclusion on Appeal B

18. For the above reasons, the appeal on Ground (b) fails. The appeal shall be dismissed and Enforcement Notice B shall be upheld.

Appeal A: Ground (a) and the deemed application for planning permission

19. Since ground (a) was not pleaded for Appeal B, it follows that planning permission is only sought for the buildings subject to Notice A and not the mixed use subject to Notice B.

Main Issues

20. The main issues in Appeal A are:

- whether Buildings A and B are inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the Framework) and any relevant development plan policies
- the effect of Buildings A and B on the openness of the Green Belt and on the character and appearance of the locality
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Green Belt

21. The Government attaches great importance to Green Belts. 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.
22. Section 13 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 CS1 of the Dacorum Borough Core Strategy 2006-2031 [adopted 2013] (the CS) imposes a spatial strategy for the location of new development that is compatible with Green Belt policy. Policy CS5 states that national Green Belt policy will apply to the borough's Green Belt areas.
23. Paragraph 154 of the Framework confirms that the construction of new buildings should be regarded as inappropriate in the Green Belt. However, it lists a number of exceptions. Buildings for the purposes of agriculture are identified as one exception. As identified above, Buildings A and B are not used for that purpose. Their use for domestic, commercial or a mixed use (even when including agricultural use) does not fall within any of the exceptions set out in Paragraph 154.
24. For those reasons, I conclude that Buildings A and B constitute inappropriate development in the Green Belt which, as described in the Framework, is harmful to the Green Belt by definition. That harm carries substantial weight against Appeal A.

Openness, Character and Appearance

25. The area is characterised by gentle rolling countryside of predominantly arable fields and pockets of woodland bordered by hedged and treed boundaries. Built development is generally dispersed as isolated dwellings and farmsteads.
26. The buildings are visible from Cupid Green Lane through the wide gated opening into the field in which the site is located. In winter months they may be visible from a public right of way a short distance to the north-east of the site when boundary vegetation to the wider field is bare. Broader landscape views of the buildings are also available from the south.
27. As buildings on land that was previously undeveloped, their presence has an adverse effect on both the spatial and visual aspects of the openness of the Green Belt. I also consider that the form, external materials and colour of building A are not typical of the predominantly agricultural or residential buildings characteristic of the locality. Despite some degree of screening by the

boundary fencing and an adjacent building, in combination with its scale and form, the bright opaque plastic sheeting cause it to appear incongruous in the rural landscape.

28. Building B, utilises scorched timber cladding to the exterior elevations. It reflects the dark boarding of traditional agricultural buildings in the wider landscape. It has a similar visual appearance to a larger agricultural shed on a neighbouring plot. Accordingly, its external appearance is in keeping with the characteristic design of some buildings in the locality.
29. However, within the unusually small plot bordered by domestic style fencing, the arrangement of the buildings appears out of keeping with both characteristic agricultural or domestic development in the wider rural landscape. Although they form a group with buildings on other plots, in contrast to local farmsteads or typical layout of ancillary domestic buildings, their arrangement provides little by way of the functional relationship reflective of those characteristic traditional rural clusters.
30. Furthermore, that arrangement contributes to a proliferation of unrelated buildings and structures that together also result in visual harm to the natural and established character of the wider rural landscape and departs from the characteristic layout of development in the local countryside area.
31. Although I have found in favour of the appellant in relation to the design and external appearance of building B, that does not alter or outweigh the harm that it causes to the openness of the Green Belt or the cumulative harm arising from the effects of both buildings on both the Green Belt and on the character and appearance of the rural landscape. Accordingly, I find the development fails to meet the requirements in Policies CS1, CS5 and CS25 of the CS as they require conservation of the rural character of the borough, the character and appearance of the countryside and Dacorum's natural and historic landscape.

Other Considerations

32. In support of the development, the appellant highlights an intention to utilise Building B for the purposes of a chicken hatchery to assist in addressing a shortage in supply. Restriction of the use of the building for agricultural purposes would remove the definitional harm. However, it would not outweigh the harm to the character of the location and the rural landscape due to the siting of the building and its effects in conjunction with nearby buildings. Furthermore, there is little before me to indicate that those effects could be adequately mitigated on the site.
33. I recognise that the alternative design of Building A and the construction of both buildings prioritised the use of recycled materials. As a method of environmentally sustainable construction, I find this is a matter that is entitled to moderate weight.
34. The appellant refers me to a large barn building with the benefit of planning permission which was constructed in the neighbouring plot. However, little detail is provided of that permission or the basis on which it was granted. In the absence of supporting details for that development or another referenced approval of housing on land elsewhere in the Green Belt, I am unable to draw comparisons, or otherwise, with the development before me.

35. A permission for a dog business nearby is also noted. However, this provides little justification for the erection of the buildings subject of the Notice. As distinct land uses, additional reference to the uses of plots nearby for the siting of a caravan and car sales, which may or may not be lawful, add little weight in favour of the development.
36. I note the appellant's belief that success on appeal of an earlier enforcement notice alleging 'agricultural research' effectively granted planning permission at the site. However, as a ground (a) appeal was not maintained in that instance, the outcome of that appeal has little bearing on the case before me. The effect was only to conclude that the use taking place at that time was not 'agricultural research' as alleged.
37. The appellant contends that he suffered administrative difficulties with the Council and the Inspectorate, including fees paid for various planning applications and appeals, difficulties due to personnel changes, incorrect or poor advice, and the effects of the Covid-19 lockdowns. This followed discussion with the Council in relation to his site aspirations. Whilst I sympathise the difficulties that may have occurred, including those due to the restrictions imposed during the Covid-19 pandemic, they are not matters of significant weight in relation to the substance of the ground (a) appeal.
38. The appellant claims that the Council, in taking this enforcement action, discriminated against him on the basis of his nationality. However, he has submitted little evidence to substantiate that concern, and my remit in any event does not extend to scrutinising the Council's behaviour. My authority extends to dealing with the grounds of appeal against the Notice, but I cannot consider or speculate as to why the Council chose to issue it as they did. Nonetheless, I can reassure the appellant that my decision on Appeal A will be based entirely on the planning merits.

Very special circumstances and the planning balance

39. By virtue of their uses, Buildings A and B are inappropriate development in the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that and any other harm to it. The buildings also cause visual and spatial harm to the openness of the Green Belt, which is one of its essential characteristics.
40. In addition, the appearance of Building A and the arrangement of development both on the site and in conjunction with other development nearby, result in significant harm to the rural character and appearance of the locality, the wider countryside area and Dacorum's natural and historic landscape.
41. In my view, the considerations presented by the appellant, including the buildings' construction from recycled materials, the difficulties in communications with the Council and claims of discrimination, or planning permissions granted elsewhere, whether taken singularly or together, do not clearly outweigh the totality of the harm that I have identified.
42. Accordingly, I find the very special circumstances necessary to justify granting planning permission do not exist and the development is contrary to Policies CS1, CS5 and CS25 of the Dacorum Borough Core Strategy 2006-2031

and the Framework when read as a whole. It follows that planning permission should be refused for the erection of Buildings A and B.

43. In coming to the above conclusion, I have been mindful that any requirement to remove existing domestic facilities from the site may deprive the appellant of living quarters or living space used for a significant proportion of his time. However, the appellant did not seek planning permission via Appeal B for the domestic use of the site, and he has not argued that Buildings A or B are needed for that purpose either. A refusal of permission is therefore proportionate in order to uphold the legitimate and well-established planning policy aims to protect the Green Belt and the character and appearance of the countryside.
44. I have had due regard to the aims of the Public Sector Equality Duty (PSED) set out in s149 in the Equality Act 2010: to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant may have the protected characteristic of race, given his nationality, but he has not shown that this is intrinsically related to the erection of Buildings A or B. Since the development is not acceptable in planning terms, a refusal of permission does not amount to unlawful discrimination and is the only decision which can advance equality of opportunity and foster good relations. The PSED adds weight to my decision.

Conclusion on Appeal A

45. For the reasons above, Appeal A shall be dismissed, Notice A shall be upheld, and planning permission shall be refused for the erection of buildings on the Land.

R Hitchcock

INSPECTOR