



Appeal Decision

Site visit made on 25 November 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2025

Appeal Ref: APP/D1265/W/24/3338057

Diddy's Field, Whitemoor, Wimborne, Dorset BH21 7DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Harianto Trygvy against the decision of Dorset Council.
 - The application Ref is P/FUL/2023/03831.
 - The development proposed was described as 'retrospective application for the retention of a boundary fence'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form submitted with the appeal states that the development has started, been completed and that the boundary fence is timber. Prior to its decision the Council received an amended application form describing a metal fence, which is what is in situ (the fence). The fence may still be within the red line of the site but from what I could see it does not entirely match the alignment or position shown in either the 'Proposed Fence Location on Site Plan' or the 'Proposed section A-A' plan¹. The Council noted the boundary fence as shown in these plans but its officer report and appeal statement focused on the fence, as does the appellant's appeal statement. I have, therefore, determined the appeal on this same basis.

Main Issues

3. The main issues are:
 - whether the fence is inappropriate development in the Green Belt;
 - if it is inappropriate development, its effect on the openness of the Green Belt;
 - its effect on the character and appearance of the area; and
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to very special circumstances required to justify the fence.

Reasons

4. The site is a long, narrow strip of land in the countryside in the Green Belt. One side of it contains a wide verge of trees, hedgerow, shrubs and ground cover scrub next to a lane. The other side is a slither of a large grass field. The fence runs roughly along the edge of this field, partly inset within this vegetation. It includes a

¹Drawing number 305.1 GA.03

pair of gates splayed back at an angle from the lane where there is a vehicular entrance through a gap in the verge.

Whether inappropriate development

5. Policy KS3 of the Christchurch and East Dorset Local Plan Part 1 Core Strategy, April 2014 (the CS) was not cited in reason for refusal 1 of the Council's decision notice. I am not persuaded this means it is 'common ground' the fence does not conflict with this policy, as the appellant suggests. A copy was provided with the appeal questionnaire and both main parties have referred to it. It includes that development in the Councils area will be contained by the Green Belt by maintaining open land between individual settlements. The National Planning Policy Framework (NPPF)² sets out that development in the Green Belt is inappropriate unless an exception applies. The appellant relies on the exceptions at NPPF paragraphs 154(d) and the relevant part of (g).

Paragraph 154(d)

6. The Council considers that constructing the fence was an engineering operation. There is no dispute that operational development has occurred, which also includes building operations³. Either way, there is no apparent reason why the fence is not a structure or an erection thus by definition a 'building', as the appellant contends⁴.
7. The application form does not refer to a 'replacement' fence. The appellant states that the fence is where 'there was previously a post and rail fence and a field gate' that 'ran along the entire length of the site'. The appellant's photograph refers to a very short section of this previous fence next to a traditional field gate. I saw no trace of either, though there is an existing low, about 1m high, timber post and wire fence along the outer face (lane side) of the fence. The Council does not dispute that the fence replaced the previous fence. On this basis, it is a replacement fence and, as such, in the same use as the previous fence.
8. The fence is between 170m to 180m long, as was the previous fence. In isolation a 0.8m dimension might be a 'modest' measurement, as the appellant claims. However, taken in context in this appeal, the 0.8m increase means the 1.8m high fence is significantly taller than the 1m high previous fence, approaching twice its height. This considerable proportionate (80%) change also results in appreciable increased surface area in the fence.
9. The replacement building in this appeal is, therefore, materially larger than the one it replaced. Accordingly, and also notwithstanding that it is in the same use, it fails to meet the exception at NPPF paragraph 154(d).

Paragraph 154(g)

10. The appellant considers that the fence does not have 'significantly or materially greater impact upon the openness of the Green Belt than the previous fence'. There is, though, more to this exception than openness.
11. The site is not part of an agricultural holding but the application form states it is in agricultural use and the appellant does not suggest otherwise. In the absence of any other explanation, the fence is intended for agricultural use of the site which

² NPPF December 2024

³ Section 55, Town and Country Planning Act 1990 (as amended)

⁴ Section 336, Town and Country Planning Act 1990 (as amended)

includes part of the rest of the field. The NPPF defines previously developed land (PDL). This excludes 'land that is or was last occupied by agricultural... buildings'⁵. As established earlier, for planning purposes in this appeal, the fence is a building. There is no evidence the site has been lawfully developed and is or was occupied by a permanent structure for any other purpose.

12. Consequently, the site is not PDL and the fence fails to meet the exception at NPPF paragraph 154(g). It is not therefore necessary for me to also consider if the fence is limited infilling or partial or complete redevelopment of PDL.

Conclusion

13. I find that the exceptions at NPPF paragraphs 154(d) and 154(g) do not apply so the fence is inappropriate development in the Green Belt.

Effect on the openness of the Green Belt

14. The previous fence was constructed with wide timber posts and horizontal rails but these components were low down and reasonably widely spaced. This gave a largely 'open' boundary feature, as did the few metal bars in the field gate. The metal posts and mostly vertical rails in the fence are in the main individually narrower in profile. However, these components are considerably taller, more numerous and more closely spaced than in the previous fence. This results in a more tangible 'solid' boundary feature, including where the same materials and design form a pair of gates and angled splay. Even if all of the fence is on the same alignment as the previous fence, there is now a significantly greater concentration of built form in and along this part of the site for a considerable distance, including at an elevated height where there was none previously.
15. Consequently, the overall size of the fence in these terms means that this part of the site is no longer open in any equivalent or comparative sense than it was with the previous fence, not even close. This significant extent and upward spread of additional built form would not safeguard this part of the countryside from this encroachment, which is a purpose of the Green Belt.
16. Despite the setback distance from the lane, this innate permanent spatial presence would have a glimpsed visual presence in public view to passers-by using the lane; more so during winter months when foliage is not in leaf, particularly of the gates (especially when closed) and splay which can be observed across the gap in the verge throughout the year. In addition, much of the full extent of the fence is in close and more distant view to users of the nearby public right of way from both directions as it crosses the field at an angle to the south⁶.
17. The appellant refers to some caselaw which is relevant to considering openness in the Green Belt⁷. While these extracts include general principles there is no evidence that the specific circumstances are directly comparable to this current appeal. The same applies to the appeal decision the appellant has referred to, which in the extract provided also relates to very special circumstances⁸. Like those other Inspectors, I have made a planning judgement on openness (and elsewhere

⁵ NPPF Annex 2: Glossary

⁶ Ref E45/28

⁷ *Timmins v Gedling Borough Council* (2014) EWHC 654; *John Turner v SoS for CLG and East Dorset Council* (2016) EWCA Civ 466; *Samuel Smith Old Brewery (Tadcaster) Limited v North Yorkshire CC* (2018) EWCA Civ 489

⁸ APP/Y3615/D/13/2190816

below on very special circumstances), including with regard to the individual planning merits of the development in this current appeal.

18. Taking account of all the above, and albeit in a small way compared to the extent of the Green Belt, I find that the fence causes moderate harm to the openness of the Green Belt which is one of its essential characteristics. It is therefore contrary to CS Policy KS3 and NPPF paragraph 142.

Effect on the character and appearance of the area

19. The site is in an area of mainly undeveloped countryside, mostly comprising fields or paddocks. The hamlet of Broomhill is too far along the lane to the southwest to have any interrelationship with the site. A few dwellings and other rural buildings next to or near the site, along the lane to the northeast, are sporadic in nature⁹. This development includes some walls alongside the lane and some with splayed vehicular entrances. But whether to fields or at these properties, boundary features in this area are usually traditional low, long timber post and wire or rail fences, some with stock proof wire mesh and traditional field gates and with or without trees, hedgerow or shrubs and often wide vegetated verges. These features are not unusual or unexpected in the countryside and complement the distinctly rural nature and ambience of this area.
20. The fence is dark green in colour and partially obscured front and rear in some places by the vegetated verge. However, its crude utilitarian metal palisade design is without any equivalent in this area that I saw or have been referred to. The inherently unsympathetic materials and form would not look out of place in an urban setting, such as at a commercial premises or in an industrial estate. But here this individual linear feature does not have any meaningful continuity in materials or form with any other nearby fence and is conspicuous along one side of the site and edge of the field. The absence of greater public visual intrusion does not alleviate its innate incongruous, jarring presence in the countryside which is plainly evident to the extent that it can be seen.
21. Consequently, I find that that the fence causes appreciable harm to the character and appearance of the area. It is therefore contrary to CS Policies HE2 and HE3. These include that development should be compatible with local distinctiveness in layout, architectural style, scale, bulk, height, materials and visual impact. It should also enhance the landscape character of an area including natural features such as field boundaries.

Other considerations

Permitted development rights (PDR) and fallback

22. PDR are not removed in the Green Belt by any national provision and I have not been informed about any relevant local provision to that effect. PDR to erect or construct a gate, fence, wall or other means of enclosure is, amongst other things, subject to a limitation that adjacent to a highway used by vehicular traffic (in this case the lane) it should not exceed 1m above ground level or elsewhere not exceed 2m above ground level¹⁰. These PDR are a material consideration.

⁹ Including Twin Fords and Trefellen Lodge referred to by the appellant

¹⁰ Schedule 2, Part 2, Class A, paragraph A.1(a) and (b) - The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

23. There are no indicative schemes before me, but a 1m fence or wall next to the lane would not be directly comparable to the fence given a significantly different position and height. The appellant's specific objectives for retaining the fence for agricultural use of the site have not been explained, so it is not clear if this PDR would achieve the same purpose or outcome as the fence. Nor is any other cogent reason given to indicate it is likely a 1m fence or wall would be built next to the lane if planning permission is not granted for the fence. These considerations also apply to a 2m fence or wall. Additionally, there is no objective evidence¹¹ that a 2m fence or wall set further back from the fence, into the site or the rest of the field, even if by 1m, would as a matter of fact and degree be a means of enclosure (a 'boundary fence' as was applied for) and not free-standing, so still within the scope of this PDR.
24. In any event, and even if the same length, a 1m fence or wall would also be significantly smaller in size than the fence. Moreover, even if different in materials or design, a 1m or 2m fence or wall would have a materially different effect on the openness of the Green Belt and the character and appearance of the area. The appellant refers to some caselaw extracts relevant to fallback¹² which contain general principles. There is no evidence the specific circumstances are directly comparable to this current appeal.
25. The appellant has not, therefore, demonstrated that there is a real prospect of greater than a theoretical possibility of either fallback development occurring. As such, these PDR have limited weight in my decision.

Other appeal decisions

26. These include a fence, gates, piers and walls in different Council areas and two others are about a side extension to a dwelling¹³. The alleged relevance of any of these decisions has not been explained by the appellant but were anyway informed by the particular site and development circumstances of those cases. Accordingly, these appeal decisions have little weight in my decision.

Other Matters

27. CS Policies HE2 and HE3 are consistent with objectives of the NPPF to achieve well-designed places and to conserve and enhance the natural environment, including by development that adds to the overall quality of an area, is visually attractive, sympathetic to local character of the surrounding landscape setting and maintains a strong, distinctive sense of place in building types and materials. Also, in recognition of the intrinsic character and beauty of the countryside.

Green Belt Balance

28. The fence is inappropriate development in the Green Belt, by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. As is also required by the NPPF, I give substantial weight to any harm to the Green belt, including to openness. The harm to the character and appearance of the area adds further significant weight against the appeal.

¹¹ Such as a certificate of lawfulness of proposed development

¹² *Burge v SOS & Chelmsford BC* [1987]; *Mansell v Tonbridge And Malling Borough Council* [2017] EWCA Civ 1314; *New Forest District Council v. Secretary of State for the Environment and Shorefield Holidays Limited* [1996] JPL 935

¹³ APP/G5180/C/18/3218808, APP/G5180/C/18/3195986, APP/G5180/C/18/3216957, APP/G5180/C/18/3216958

29. The other considerations outlined earlier do not, therefore, individually or collectively clearly outweigh the totality of the harm. Consequently, the very special circumstances necessary to justify the fence do not exist.

Conclusion

30. The fence conflicts with local and national policy to protect the Green Belt and the character and appearance of an area. There are no other material considerations to indicate that the appeal should be determined otherwise than in accordance with the development plan taken as a whole. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR