



Appeal Decisions

Site visit made on 7 January 2025

by **Lynne Evans BA MA MRTPI MRICS**

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Appeal A Ref: APP/Z3635/W/24/3346327

30 Nettlefold Place, Sunbury-on-Thames TW16 6BD

- 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 David Heaford against the decision of Spelthorne Borough Council.
 - The application Ref is 24/00155/FUL.
 - The development is retention of replacement timber fencing to SW and W boundary and retention of enlarged amenity space including releveling of this area.
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Appeal B Ref: APP/Z3635/W/24/3351125

30 Nettlefold Place, Sunbury-on-Thames TW16 6BD

- 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 David Heaford against the decision of Spelthorne Borough Council.
 - The application Ref is 24/00774/FUL.
 - The development is retention of replacement timber fencing to SW and W boundary and retention of enlarged amenity space including releveling of this area.
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Decisions

Appeal A:

1. The appeal is dismissed.

Appeal B:

2. The appeal is dismissed.

Preliminary Matters

3. The application forms to both Appeals A and B confirm that the works had both commenced and been completed prior to the submission of the application. I shall therefore treat the applications as ones made under Section 73A of the Town and Country Planning Act 1990 for retrospective planning permission for development as originally carried out, namely the erection of replacement timber fencing to the SW and W boundary and erection of an enlarged amenity space with releveling.
4. Both appeals relate to the same development but under Appeal B an additional plan has been submitted which includes an additional fence line which the Appellant considers relates to the fence line granted under the original permission for the residential development (13/00153/FUL). I shall therefore consider both appeals together, and have taken into account the additional information submitted with Appeal B.

5. The National Planning Policy Framework (Framework) was revised in December 2024. I do not consider that there are any material changes in the Framework, pertinent to this appeal proposal. It is not therefore necessary to seek the views of the Appellant or the Council on the revised Framework.
6. The Council has drawn my attention to the progress of the draft Spelthorne Local Plan but has confirmed that at this point in time limited weight can be given to the draft policies. No policies from the draft Plan are referenced in the decision notices. From the information before me, I have no reason to take a different view and shall not refer to the draft Plan further.

Main Issues

7. The main issues in these appeals are:
 - Whether the development is inappropriate development within the Green Belt and effect on openness,
 - The effect of the development on flood risk
 - The effect of the development on contamination, and
 - If the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal.

Reasons

- *Whether inappropriate development*
8. The appeal property is a 3 storey dwelling on the southwestern side of a residential development, known as Nettlefold Place. The development of the former Riverside Works site of some 37 dwellings was granted permission in 2013 under the Council's ref: 13/00153/FUL. The development has been completed.
 9. Both appeals relate to seeking permission for the enclosure of land by way of the erection of a fence, the change of use of open Green Belt land to residential use under Class C3 as well as the releveling of some of the land. Due to the scale of some of the releveling works the Council regards these as engineering operations. The Appellant has not provided any alternative information and on the basis of the Council's calculations, I agree that these works amount to engineering operations.
 10. There would appear to be discrepancies between various plans relating to the boundaries of the site. The Council acknowledges that the garden space originally delineated to the appeal property appears to be smaller than that permitted under the original planning permission. However, there appears to be no disagreement between the Appellant and the Council, under either Appeal and even taking into account the additional plan submitted under Appeal B, that the fence line that now exists extends further and encroaches further into Green Belt land.
 11. The Framework, in Section 13 and at paragraph 153, sets out that substantial weight should be given to any harm to the Green Belt including harm to its openness. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154

sets out that development in the Green Belt is inappropriate unless one of a number of exceptions applies.

12. The Appellant has contended that the development falls under exception c) of Paragraph 154 which refers to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original dwelling. However, the only matter that the Appellant appears to be referring to relates to the erection of the boundary fence, whereas the development which has taken place also includes the change of use of open Green Belt land to residential land as well as raising of the land which is an engineering operation. Both of these are covered under exception h (ii) and (v) of paragraph 154 but are only to be regarded as not inappropriate if they preserve openness and do not conflict with the purposes of including land within the Green Belt.
13. The Council has also referred to 'saved' Policy GB1 of the Spelthorne Borough Local Plan 2001 relating to development in the Green Belt. This policy also sets out that development will not be permitted which would conflict with the purposes of the Green Belt and maintaining its openness. Although the overall objectives of the policy accord with the Framework, the list of developments which may be considered appropriate are more limited than those listed under the Framework, and in accordance with paragraph 232 of the Framework, this necessarily limits the weight to be afforded to this development plan policy.
14. In a number of places, the difference in the fence lines between what has been erected and where the fence line should have been erected, especially if the approved boundary line from the Linden Homes scheme is correct and if it does represent the permitted boundary line, is relatively limited, but given the considerable length of the fence line the overall area of open Green Belt land which has been enclosed is more significant.
15. There is a marked difference in character and appearance between the more urban residential developments fronting Fordbridge Road, including Nettlefold Place and entering the more open spaces associated with The Creek. There is limited information before me regarding the appearance and form of the land before the current fence was erected and changes in land levels. There are references in the Appellant's submissions to the use of the land for fly tipping and waste disposal but there is no evidence before me of these activities. The fence line is now a dominant feature along the entrance to The Creek with only a relatively narrow open embankment beyond. The fence line creates a definitive line to the residential land beyond leaving a narrow stretch of open land to The Creek.
16. Taking into account the changes in levels that have been undertaken and the current fence line along the long length of the boundary, it is my view that the works undertaken have resulted in a harmful impact on the openness of the Green Belt in this location by reducing the extent of open Green Belt land in both visual and spatial terms. The works undertaken do not therefore preserve openness.
17. For the reasons set out above, it is also my view that the development as undertaken conflicts with two of the purposes of the Green Belt as set out under paragraph 143 of the Framework, particularly c) to safeguard the countryside from encroachment but also a) to check the unrestricted sprawl of large built-up areas.

18. I therefore conclude that the development, under both Appeals A and B fails to accord with the exceptions set out under Paragraph 154 h) of the Framework and is therefore inappropriate development in the Green Belt, which is by definition harmful.

- *Flood Risk*

19. The applications were accompanied by a Flood Risk Assessment. However, the Council has raised a number of concerns with the information provided and the effect of the development on flood risk, and in particular in respect of the changes in levels on flood storage capacity or any compensation measures to mitigate for any loss of flood storage capacity, both within and beyond the fence line.

20. The Appellant has suggested that a condition could be imposed to address the shortcomings of the assessment and if necessary, any mitigating measures. However, as the development has already been undertaken and permission is being sought to retain the development as undertaken, it is not clear to me how the imposition of a condition could be appropriate or effective.

21. I am not therefore satisfied that there is information before me to enable me to conclude that the development undertaken has not increased flood risk and this conflicts with Policy LO1 of the Core Strategy and the Framework and in particular Section 14, including paragraph 181, which set out that when determining any planning application, local planning authorities should ensure that flood risk is not increased elsewhere.

- *Contamination*

22. No information was provided under either application to address potential contamination from the works undertaken. The Council's Environmental Health Officer has raised concerns because of the nature of the made ground within the Nettlefold Place development which had elevated levels of contaminants and because the work undertaken has changed the land levels, which it is understood to have included the importation of new soils, although whether or not the importation of new soils has occurred is not clear from the limited information before me.

23. The Appellant has suggested that a condition could be imposed to address this matter and, if necessary, propose any mitigating measures. The Council's Environmental Health Officer also suggested a condition to require site investigation works to be undertaken with remediation measures if required but that such a condition should be a pre-commencement condition before any use of the land is undertaken. However, as the development has already been undertaken and permission is being sought to retain the development as undertaken, it is not clear to me how the imposition of a condition could be appropriate or effective.

24. I am not therefore satisfied that there is information before me to enable me to conclude that contamination issues have been satisfactorily addressed. This conflicts with Policy EN15 of the Core Strategy and the Framework and in particular Section 15, both of which set out that when determining any planning applications, consideration of the suitability of a site for its use should take account of ground conditions including as a result of contamination.

- *Other Considerations*

25. The Appellant has offered to accept a condition for landscaping details to be submitted if considered necessary and a plan was submitted at the application stages to show additional planting beyond the fence line. Whilst additional landscaping might help to screen the fence, it would not overcome the harm to openness that I have concluded from the enclosure of the land including relevening. I can therefore only give this offer limited weight in my assessment.
26. The Appellant has also referred to fly tipping and waste disposal on the land prior to the works being undertaken. I have addressed this earlier and there is no clear evidence before me that these activities have been occurring nor any explanation, if they did occur, why the works undertaken prevent such activities continuing, albeit acknowledging that the open land is narrower. I am therefore unable to give more than very limited weight in support of this matter.
27. Although not referenced by the Appellant and I can only give it limited weight in support, I recognise that the additional garden land is of benefit to the Appellant and his family.

Conclusion

28. The development under both appeals is inappropriate development within the Green Belt and harms openness. There is also insufficient information before me to enable me to conclude that there is no harm either in respect of flood risk or contamination. In accordance with the Framework, and in particular paragraph 153, substantial weight should be given to any harm to the Green Belt, including harm to its openness. Even taken together, the other considerations put forward provide limited support for the scheme. Therefore, they do not outweigh the harm to the Green Belt and 'very special circumstances' do not exist.
29. Therefore, the development undertaken does not accord with the the development plan and there are no other material considerations to outweigh that finding. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that both Appeals A and B should be dismissed.

L J Evans

INSPECTOR