



Appeal Decision

Site visit made on 14 January 2025

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Appeal Ref: APP/Z4718/C/24/3340637

Meadowlands, Briestfield Road, Briestfield, Dewsbury WF12 0PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Philip Oldfield against an enforcement notice issued by Kirklees Council.
- The notice was issued on 9 February 2024.
- The breach of planning control as alleged in the notice is the construction of an outbuilding, drive and adjacent walls, entrance gate, boundary wall and landscaping, in the green belt.
- The requirements of the notice are to:
 - a) Permanently dismantle and remove the outbuilding from the site including the base and any foundations;
 - b) Permanently dismantle and remove the tarmac drive from the site;
 - c) Permanently dismantle and remove the retaining wall and landscaping alongside the drive to the west;
 - d) Permanently dismantle and remove the wall and landscaping alongside the drive, to the east;
 - e) Permanently remove the entrance gate and boundary wall adjoined to the gate (to the east);
 - f) Remove all dismantled resulting material from the site; and
 - g) Return the land to the condition of the land, prior to the development taking place.
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. A new version of the National Planning Policy Framework (the Framework) has been published since the Enforcement Notice was issued. Both main parties have had an opportunity to comment on any implications with respect to the current appeal. Therefore, I have had full regard to the Framework in determining this appeal.
2. The appellant's case under ground (a) is that planning permission should be granted for an alternative form of development as varied by a recent planning application submitted to the Council reference 2024/90384 which was registered on 14 February 2024.

The appeal on ground (c)

3. The ground of appeal is that the matters alleged do not constitute a breach of planning control. In this respect the appellant argues that the retaining wall referred to in the Notice varies in height but does not exceed 1.8 metres, that the dwarf wall to the rear of the access does not exceed 1.8 metres in height and the landscaping constitutes an area of pebbles and tree planting for which planning permission is not required.
4. With regards to the retaining wall, Under Part 2 Class A of the GPDO, permitted development is defined as: 'The erection, construction, maintenance, improvement

or alteration of a gate, fence, wall or other means of enclosure.’ The Council maintains that the retaining wall is not a means of enclosure and is an engineering operation within the meaning of Section 55 of the 1990 Act as amended. The retaining wall is not enclosing the land, it is an engineering operation that has been carried out. The wall retains the soil and landscaped area.

5. In *Prengate Properties Ltd v SSE* [1973] 25 P&CR 311 it was held that permitted development rights would not extend to circumstances in which a freestanding wall neither encloses nor plays a part in the enclosure of anything. In *Wycombe DC v SSE* [1994] EGCS 61 the Court held that a means of enclosure must provide some way of closing in an area so that it became enclosed.
6. There are no permitted development rights in Town and Country Planning (General Permitted Development) (England) (Order) 2015)) (the GPDO) for engineering operations and planning permission has not been sought or approved for this part of development.
7. The Council argues that the dwarf wall to the east of the driveway, taken in isolation, may be permitted development, but that it and the landscaped pebbled area, is part and parcel of one engineering operation to lay a tarmac surface and in fact retains part of the tarmac surface. As part of one engineering operation, the dwarf wall and pebbled area, therefore, do not benefit from permitted development rights.
8. Therefore, the appeal on ground (c) does not succeed.

The appeal on ground (d)

9. The ground of appeal is that at the date when the notice was issued no action could be taken. In order to succeed on this ground it would be necessary to show that the operational development was substantially completed four years before the Notice was issued; the material date is therefore 9 February 2020. In support of his appeal on ground (d) the appellant has submitted an invoice dated 6 January 2020 for paddock gates and an invoice dated 13 December 2019 for a paddock gate, automatic kit, extra sensors, aerial and 2 key fobs. In addition, there are three photographs of the driveway showing various parts of the alleged breach of planning control.
10. The invoices do not clarify whether the development had been substantially completed on their dates and it is not even clear that the invoices relate to the parts of the development in question. The photographs show various parts of the development the subject of the Notice but are undated and therefore do not provide the detailed evidence required in this case.
11. Therefore, the appellant has failed to provide sufficient evidence that the development was substantially completed on or before 9 February 2020 and the appeal on ground (d) does not succeed.

The appeal on ground (a)

12. The ground of appeal is that planning permission should be granted. The main issues derived from the Notice are:
 - i. Whether the development is inappropriate development in the Green Belt having regard to the development plan and the Framework; and

- ii. If the development is inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, or any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development

13. The Government attaches great importance to the Green Belt and its essential characteristics of openness and degree of permanence. When considering any planning application local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. The Framework states that development in the Green Belt is inappropriate, subject to a number of exceptions. These include 154 b) the provision of appropriate facilities, including buildings, for outdoor sport, outdoor recreation...; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it and 154 g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development.
14. The Council also considers the development conflicts with parts a and b of Policy LP56 (facilities for outdoor sport, outdoor recreation and cemeteries) of the Kirklees Local Plan 2019 (the LP). Part a) seeks to ensure that the scale of the facility is no more than is reasonably required for the proper functioning of the enterprise or the use of the land to which it is associated. Part b) seeks to ensure that the facility is unobtrusively located and designed so as not to introduce a prominent urban element into a countryside location, including the impact of any new or improved access and car parking areas.
15. Parts a) and b) do not reflect the latest version of the Framework with regard to development in the Green Belt. However, the supporting text to Policy LP56 does recognise that even if a development was compliant with Parts a) and b), the consequent impact on the Green Belt may render a proposal unacceptable. Therefore, I am satisfied Policy LP56 is generally consistent with the Framework, and I give it substantial weight.
16. The outbuilding and its associated access driveway comprise an appropriate facility for outdoor recreation, given the overall scale proposed and their proximity to surrounding fields. Therefore, the next stage is to determine whether the development preserves the openness of the Green Belt and whether there is conflict with the purposes of including the land within it.
17. The appeal site is situated to the northwest of Briestfield Road adjacent to a large modern detached dwelling, which has tarmac hardstanding to the front and a rear and side garden. The dwelling and the appeal development are within a larger area of land that is divided into grass fields, bounded by hedgerows, timber fences and dry stone walls.
18. The topography of the land slopes downwards from west to east and from south to north. In combination with the scale and massing of the proposed building it would be seen in views across the wider area, including Briestfield Road to the southwest and further afield. Consequently, the building would detract from the visual openness of the Green Belt. I acknowledge that nearby landscaping features including trees and hedgerows would provide some screening at certain times of

the year but would not prevent the building from being visible altogether. The evidence presented is that the proposed building would not be a substantially greater scale and massing than the earlier building, but the overall development, including the driveway, walls and other features means there is an encroachment into the countryside. This conflicts with one of the five purposes for Green Belts contained in the Framework.

19. In the light of the new Framework, the appellant contends that the land in question is previously developed land and therefore that the development the subject of this appeal falls within one of the exceptions in Green Belt policy. However, there is a new definition of previously developed land which is fundamentally different from the previous definition. The updated version defines it as being “Land which has been lawfully developed”.
20. There is insufficient evidence before me that the appeal site has been lawfully developed through the benefit of planning permission or immunity from enforcement action through the passage of time. This includes both the building that previously existed on site and the equine use of the site. The overall purpose of the change in definition of previously developed land is clearly to prevent unauthorised uses and operational development taking place in the Green Belt which may then in the future fall within one of the exceptions to Green Belt policy by being considered as previously developed land. This change also reflects concerns set out in the Written Ministerial Statement dated 17 December 2015 about the harm caused where the development of land has been undertaken in advance of obtaining planning permission.
21. In the absence of evidence of the building or use of the land being lawful the appeal site cannot be defined as being previously developed land. As such the development before me cannot be defined as being the redevelopment of previously developed land and does not fall within one of the exceptions set out in the Framework.
22. Paragraph 155 of the Framework states that the development of homes, commercial and other development in the Green Belt will not be regarded as inappropriate where:
 - a. the development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
 - b. there is a demonstrable need for the type of development proposed,
 - c. the development would be in a sustainable location with particular reference to paragraphs 110 and 115 of the Framework, **and**
 - d. where applicable the development meets the “Golden Rules” requirement set out in paragraphs 156-157.
23. Grey belt is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. Grey belt excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development. Previously developed land is land which has been lawfully developed and is or was

occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land. It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed. Therefore, in determining this appeal it is important to clarify that any land can, in fact, be grey belt – not just previously developed land. As such, I need to make an assessment about whether the appeal site contributes to the purposes of Green Belt as set out in paragraph 143 of the Framework.

24. In my judgement it cannot be said that the land in question does not contribute strongly to any of the purposes (a), (b) or (d) set out in paragraph 143 of the Framework in that it is in an area with agricultural land interspersed with residential and other development it contributes to checking the unrestricted sprawl of large urban areas and prevents neighbouring towns merging into one another.
25. Furthermore, there is no demonstrable need for the type of development proposed and the development does not meet the “Golden Rules” requirement set out in paragraphs 156 which relate to major housing development proposed on land released from the Green Belt through plan preparation or review and affordable housing, among other things. As previously set out above, the building has not been erected on previously developed land and, although the proposal before me is reduced in scale, it would harm the spatial openness of the Green Belt.
26. The access to the appeal building constructed of stone chippings would be an urbanising feature encroaching upon the countryside, when compared to its previous condition. The use of an alternative method of reinforcing the ground to form an access would be likely to reduce its visual impact. I also accept that to some degree the redesigned access would have a more informal appearance than the hardstanding currently in place. However, it would be a substantial artificial treatment which would encroach into the countryside and in the specific circumstances of this case would be unacceptably incongruous in the landscape.
27. For these reasons, the appeal building harms the spatial and visual openness of the Green Belt and is an encroachment into the countryside. The proposed access and associated works including boundary treatments, retaining walls and gates would harm the spatial openness of the Green Belt and would also encroach into the countryside. The appeal development is, therefore, inappropriate development in the Green Belt and conflicts with Policy LP56 of the LP and with the Framework, in this regard.

Other Considerations

28. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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 reasons of inappropriateness, and any other harm resulting from the appeal development, is clearly outweighed by other considerations.
29. The appellant contends that the development improves the character and appearance of the area and the new building would replace one that was unsightly. In addition, the building would provide storage space for equipment used to maintain the surrounding land. However, there are few details of the appearance of the previously demolished building or the external storage of

equipment. In fact, a photograph of the original building dated 2019 shows the earlier building to have a reasonable appearance, similar to a timber clad barn, and the outdoor storage of equipment is characteristic of many rural areas. Therefore, on that basis the differences between the original building and the proposal before me would not be greatly significant and therefore this carries only limited weight.

30. Part of the development the subject of the enforcement notice relates to the driveway and adjacent walls, entrance gate, boundary wall and landscaping. These features are visually harmful features and harm the spatial openness of the Green Belt. Importantly, they also constitute unauthorised encroachment into the countryside. In comparison with the existing situation on site the appeal development may be an improvement in relation to openness and the character and appearance of the countryside; however, the existing tarmac access, gateway and other features do not benefit from planning permission and consequently, I give these no weight in my decision.
31. I have taken account of the case law and recent planning decisions to which my attention has been drawn, but I have determined the appeal on ground (a) on its own merits taking account of the specific circumstances of the development and the latest planning policies and guidance.
32. For these reasons I find that the other considerations in this case, as set out above, do not clearly outweigh the harm to the Green Belt I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The appeal development therefore conflicts with the development plan as a whole and the Framework.

The appeal on ground (f)

33. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve that purpose. The purposes of the enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the permanent dismantling and removal of the outbuilding, the tarmac drive, the retaining wall and landscaping alongside the drive, the entrance gate and boundary wall adjoined to the gate, removing all dismantled resulting material from the site and returning the land to the condition of the land, prior to the development taking place, the purpose is clearly to remedy the breach. Leaving any part of the development in place would not achieve that purpose. In this respect the appeal on ground (f) fails.
34. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in this appeal it would be possible to grant planning permission for part of the development. I have covered this matter under ground (a) and determined that the lesser steps suggested by the appellant would conflict with the development plan and the Framework. As such the appeal on ground (f) does not succeed.

The appeal on ground (g)

35. The ground of appeal is that the time given to comply with the requirements is too short. The 90 days given would be sufficient to meet the requirements of the Notice. The 12 month compliance period suggested by the appellant would be

excessive having regard to the ongoing harm caused by the development. The appellant has not provided sufficient evidence or justification why the requirements cannot be met in 90 days and therefore the appeal on ground (g) fails.

Formal Decision

36. 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.

A A Phillips

INSPECTOR