



Appeal Decisions

Site visit made on 10 February 2025

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date of Decisions: 28th February 2025

Appeal A Ref: APP/C1950/D/24/3352247

8 Pennyfathers Lane, Welwyn, Hertfordshire AL6 0EN

- 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 Anthony Kearns against the decision of Welwyn Hatfield Borough Council.
 - The application ref. is 6/2024/0511/HOUSE.
 - The development proposed is: Installation of swing opening gates on the existing drive to the house.
-

Appeal B Ref: APP/C1950/D/24/3356518

8 Pennyfathers Lane, Welwyn, Hertfordshire AL6 0EN

- 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 Anthony Kearns against the decision of Welwyn Hatfield Borough Council.
 - The application ref. is 6/2024/1543/HOUSE .
 - The development proposed is: Installation of swing opening gates on the existing drive to the house.
-

Decisions

Appeal A Ref: APP/C1950/D/24/3352247

1. The appeal is dismissed.

Appeal B Ref: APP/C1950/D/24/3356518

2. The appeal is allowed and planning permission is granted for installation of swing opening gates on the existing drive to the house at 8 Pennyfathers Lane, Welwyn, Hertfordshire AL6 0EN in accordance with the terms of the application, ref. 6/2024/1543/HOUSE, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted (metal swing opening gates) shall be carried out in accordance with the following approved plans numbered and titled: A01 Block Plan; A01A Revised Block Plan; A03 Location Plan; A04 Proposed Gates; and A06 Position of Existing Entrance – Unaltered.

Preliminary matters

3. This letter relates to 2 planning appeals under section 78 of the Town and Country Planning Act 1990. Each appeal is to be considered individually. However, as the cases are for the same site and are similar in their nature and considerations, I have dealt with each of the appeals within this single letter so as to avoid repetition and for the avoidance of doubt.

4. The lengthy description of the proposed works on the application form for Appeal A contains various details that would be apparent from the submitted plans. What appears in the description in the heading above is taken from part of the first sentence on that application form in the interests of conciseness and consistency with the simpler description adopted for Appeal B. A pair of part solid, part slatted timber gates with oak gate posts are proposed under Appeal A. Appeal B concerns a later revised scheme for a pair of gates with metal railings and oak gate posts.
5. Since the appeals were submitted, a revised National Planning Policy Framework (the Framework) has been published. The new version does not materially differ from the previous one insofar as it relates to the main issues in these appeals and has not raised any new matters which are determinative to their outcome.
6. No. 8 is a dwelling situated in the Green Belt. The appellant notes that before the first application, the subject of Appeal A, was dated by the Council, there were 3 pre-booked, pre-application consultation meetings with the Council's planning officers. Even though, according to the Council's Questionnaire, that application was accompanied by an admittedly brief Green Belt Impact Statement, he is adamant and disappointed that no reference was made to Green Belt issues or policies at these meetings. The appellant is also dissatisfied that the Council made the decisions without any reference back to him or his agent.
7. I can understand the frustrations expressed by the appellant, but in householder appeals I do not have the Council's version of events relating to those meetings before me. Besides, pre-application advice is given informally without prejudice to the Council's formal consideration of a future planning application by officers or a planning committee. Decisions on applications should be made as quickly as possible and officers were entitled to determine the applications on the basis of the material before them without any further dialogue with the appellant/agent.

Main issues

8. For both appeals, the main issues are:
 - Whether the proposed gates would be inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;
 - Their effect on the openness of the Green Belt; and
 - If the proposed gates do amount to inappropriate development in the Green Belt, whether the harm to the Green Belt 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.

Planning policy

9. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The most relevant development plan policy is Policy SADM 34 (Development within the Green Belt) of the Welwyn Hatfield Borough Council Local Plan 2016-2036 (LP). Section 13 of the Framework titled *Protecting Green Belt land* is an important material consideration. 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.

Reasons

Whether the proposed gates would be inappropriate development in the Green Belt

10. LP Policy SADM 34 defers to the requirements of the Framework in relation to proposals such as the appeal schemes. It indicates that in the Green Belt planning permission will be granted for development in accordance with national policy and other policies in the plan subject to criteria covering various topics. Paragraph 154 of the Framework explains that development in the Green Belt is inappropriate apart from a few exceptions set out in a closed list. All other development not covered by any of the exceptions is therefore inappropriate.
11. At section 336 of the 1990 Act as amended, “building” is defined as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. This definition is held to include any man-made, above ground structure, including walls, pillars, iron railings, gates and fencing, all of which would amount to building operations normally undertaken by a person carrying on business as a builder.
12. In the light of that definition, focussing on the permitted exceptions of potential relevance at paragraph 154 c), d) and h)ii respectively of the Framework, the gates would be about 9 m away from the host dwelling and a similar distance away from the outbuilding in the front garden so they could not amount to an extension or alteration of a building, there is currently no building (gates) at the entrance to replace as such, with only anecdotal evidence suggesting that historically the property benefitted from entrance gates of an unspecified size, and what is proposed to take place cannot be described as engineering operations. The appellant is therefore unable to rely on any of the exceptions at paragraph 154 of the Framework. Nor, despite their limited scale and form, would the gates fit with any of the types of development that are permitted under LP Policy SADM 34.
13. It may seem odd, on the face of it, that a sizeable, yet not disproportionate, addition to a building might be found to be not inappropriate in the Green Belt, at the same time as gates are not included in the closed list of exceptions. However, I have no power to rewrite the policies. My task is to assess the proposals against those policies as they stand. No doubt, if the Government or the Council had meant for such items as gates, boundary fences and walls to be permitted as an exception, the Framework and the LP would have been written to facilitate this option.
14. I have been referred to 2 appeal decisions from 2021 (3274437 allowed and 3256344 dismissed) at 21 The Ridgeway, Cuffley. Both Inspectors found that the front boundary wall, railings, piers and gate there would be inappropriate development in the Green Belt for similar reasons to those I have set out above.
15. The proposed gates in both appeals would constitute inappropriate development in the Green Belt for the purposes of the Framework and the development plan.

Effect on the openness of the Green Belt

16. Openness, an essential characteristic of the Green Belt, can be perceived visually and spatially. The proposed gates would be screened from public vantage points on the approach along Pennyfathers Lane from each direction due to their position

3.1m back from the carriageway edge and the extensive mature and tall planting along the roadside boundary of the appeal property on either side of the entrance.

17. This visual context is very important because although the gates in both Appeals A and B would, albeit on an extremely limited scale and physical footprint, occupy ground and air space that is currently devoid of built form, the open design across the full width and height of the metal gates in Appeal B would be fully apparent and dominant in head-on views from the vicinity of the junction with Vera Lane directly opposite the appeal site, the only obvious public vantage point. Metal railings of the type proposed can sometimes appear merged together in short-lived oblique views to form a solid sheet of metal but given the layout I have described this would not occur here. Openness is the counterpart of urban sprawl and does not imply freedom from any form of development. Having regard to their limited scale, the locational context and visual considerations, it is my planning judgement that the Appeal B gates would not materially harm the openness of the Green Belt.
18. The part solid, part slatted timber gates in Appeal A would provide for a stronger and more emphatic delineation across the front entrance in those same head-on views. They would be far less visually porous than the gates in Appeal B and would cause some limited harm to the openness of the Green Belt.
19. With reference back to the appeal decisions mentioned in paragraph 14 above, I have exercised my planning judgement about openness on the individual merits of the 2 specific proposals before me. Those other appeals clearly involved more substantial and extensive works across the whole front boundary of 21 The Ridgeway, Cuffley.

Other considerations

20. Given the development would be confined to the grounds of 8 Pennyfathers Lane, there would be no conflict with the Green Belt purposes listed in paragraph 143 of the Framework, including a) to check the unrestricted sprawl of large built-up areas and c) to assist in safeguarding the countryside from encroachment. Furthermore, the Council accepted that both appeal schemes would not result in harm to the character and appearance of the area or to the Landscape Character Area. An absence of harm in these respects is not a positive consideration in favour, rather it should be regarded as neutral in the balance. This also applies to the lack of objections from the Parish Council, local residents and the Highway Authority.
21. The proposed gates are required to help protect the appellant's grandchildren and friends when playing in the garden from potential harm in terms of being injured by vehicles on the adjacent highway or in terms of persons of ill-intent having unrestricted access. The Framework seeks to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. These policy provisions significantly favour the proposals even though the situation outlined might not be unique to the host dwelling. There is no requirement for each other consideration to be very special in itself.
22. The appellant would be content with a planning condition requiring that the gates only open inwards into the site at all times. This would have limited benefit in the light of the responses from the Highway Authority who raised no objections to the proposed gates as submitted in both appeals.

23. My attention has been drawn to a fallback whereby the host property benefits from permitted development rights (PDRs) which would permit the erection of a gate in the same position as applied for to a height of 1m. Given the appellant's desire for a secure gate at the entrance and the fact that he has made 2 planning applications and 2 planning appeals for gates, there is more than a reasonable prospect that those PDRs would be implemented if the appeals fail. It is therefore a viable fallback. Moreover, there would be no control over the design of or materials for any gates erected under PDRs and it is not unreasonable to assume that the appellant would pursue a solid wooden design for such gates bearing in mind the nature of the gates preferred and chosen for the first application the subject of Appeal A.
24. Taking into account any gateposts, such a scheme under PDRs could result in about 3.95 sq. m of solid timber facing the highway. This would have a greater effect on the visual openness of the Green Belt than the open style of the metal gates in Appeal B even though they would reach marginally higher than 1m above ground level. Conversely, given the overall width and height of the slats and the top bar across the wooden gates in Appeal A, I am not convinced that the implementation of PDRs would be more harmful to openness than what would occur if the Appeal A scheme was implemented.
25. Without stronger evidence, photographic or otherwise, I have attached no weight to the claim that there may once have been entrance gates at the appeal property.
26. The appellant draws attention to examples of other gates at various properties in the local area. Given the approximate heights provided by the appellant, it is apparent that most, if not all of them, could not have relied upon PDRs. Some may have been in existence for a long time and become immune from enforcement. There is no information to show that the Council has been inconsistent by recently granting planning permission for the examples provided. They must accordingly carry very limited weight in favour of the proposals.

Whether very special circumstances exist

27. The proposals in Appeal A and Appeal B would be inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the gates in Appeal A would cause some limited harm to openness in the Green Belt. I have identified no other harms in Appeals A and B.
28. In accordance with the Framework, substantial weight should be given to any harm to the Green Belt, including harm to its openness.
29. On the other hand, I have found that in Appeal B the implementation of PDRs would have a greater effect on the visual openness of the Green Belt than the open style of the metal gates proposed. I attribute very substantial weight to this. Moderate weight in both Appeals A and B accrues to the benefits the gates would bring about for the home environment and children in terms of safety, health and well-being and reducing the fear of crime.
30. For Appeal A the other considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness and loss of openness. However, for Appeal B the other considerations do clearly outweigh the totality of harm arising solely from inappropriateness and looking at that case in the round I consider that they amount to the very special circumstances required to justify the development.

Final balance

31. Appeal A would be contrary to development plan policy LP Policy SADM 34 when read as a whole alongside the Framework and there are no other material considerations to outweigh that finding. Therefore, the development proposal the subject of Appeal A should be refused. Appeal B would accord with the LP Policy SADM 34 when read as a whole alongside the Framework. Therefore, the development proposal the subject of Appeal B should be approved without delay.

Conditions

32. The Council, in its Questionnaire for Appeal B, suggests 2 planning conditions should be imposed in the event of the appeal being allowed. As well as a condition setting a time limit for the commencement of development, it is reasonable and necessary to ensure that the development in Appeal B is carried out as intended. Therefore, a condition requiring that the development is carried out in accordance with the relevant approved drawings is imposed in the interests of certainty.

Conclusion

33. For the reasons given, Appeal B succeeds but Appeal A fails.

Andrew Dale

INSPECTOR