



Appeal Decisions

Inquiry 3, 5 and 9 December 2024

Site Visits on 2 and 5 December 2024

by Mrs H M Higenbottam BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Appeal A: APP/T2215/C/24/3337755

Appeal B: APP/T2215/C/24/3337756

Land adjacent Beacon Hill, Rowhill Road, DARTFORD, Kent, DA2 7QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr J Watts and Appeal B is made by Mrs S Watts against an enforcement notice issued by Dartford Borough Council.
 - The notice was issued on 4 January 2024.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a detached building in the approximate position shown outlined in red on the attached plan.
 - The requirements of the notice are:
 1. Cease using the structure for domestic storage.
 2. Demolish the structure, located within the red line area shown on the attached plan.
 3. Remove from the land all material arising from the demolition of the building.
 4. Reinstate the land to its condition prior to the erection of the building.
 - The periods for compliance with the requirements is: 6 months.
 - Appeal A and B are proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 (as amended) (the Act). Appeal A is also proceeding on ground (a) set out in Section 174(2) of the Act. 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.
-

Decisions

Appeal A and B

1. It is directed that the enforcement notice is varied by:
 - the deletion of requirement 1 at paragraph 5 in its entirety.
 - the deletion of the word 'structure' in requirement 2 at paragraph 5 and its substitution with the words "detached building";
 - the insertion of the word 'detached' between the words 'the' and 'building' in requirement 3 and requirement 4 at paragraph 5; and
 - the renumbering of requirements 2, 3 and 4 as 1, 2 and 3 at paragraph 5.
2. Subject to these variations, the appeals are dismissed, the enforcement notice is upheld. In relation to Appeal A only planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

3. An application for costs was made by Dartford Borough Council against the appellants. This application will be the subject of a separate decision.

Preliminary Matters

4. A case management conference was held with the parties on 15 October 2024. The appellant stated that the ground (f) appeal would be withdrawn, and the Inquiry would consider grounds (d) and (a) only. The Statement of Common Ground (SoCG) confirms that an appeal under ground (f) is no longer being pursued. I have proceeded on this basis.
5. The oral evidence at the Inquiry was given under oath or affirmation.
6. In response to the Costs Application made by the Council the appellants stated that Mr Watts had suffered a medical episode in the recent past. I was told this affected the time needed to go through evidence. There is no substantiated evidence to demonstrate in what way the medical episode would have affected Mr Watts ability under oath to give the evidence he did. Therefore, this knowledge, received late in the day, does not influence how I will deal with the oral evidence I received from Mr Watts in this decision.
7. The revised National Planning Policy Framework (revised Framework) was published on 12 December 2024. Both parties were consulted on the revised Framework. The appellants confirmed that the revisions do not have any relevance to the appellants' case. The Council made some comments which I shall take into account in this decision.

The Notice

8. The allegation refers to the erection of a detached building only. Requirement 1 requires the domestic storage use of the structure to cease. However, no use is referred to in the allegation.
9. In my view, requirement 1 goes beyond what is necessary to remedy the breach and by removal of the building (requirement 2) nothing could be stored within it, so requirement 1 is also unnecessary and serves no purpose. The Council do not accept that requirement 1 is unnecessary, but do not explain why in the SoCG. As I consider requirement 1 to be unnecessary, I will vary the Notice by deleting the first requirement and renumbering the remaining requirements. No injustice to either party would result from such a variation.
10. Requirement 2 refers to the structure and requirements 3 and 4 refer to the building. For the sake of consistency and clarity, I will vary each of the retained and renumbered requirements to refer to the detached building. Again, I consider there would be no injustice to either party from such a variation.

Appeals A and B on ground (d)

11. An appeal on this ground is that at the date a Notice is issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters. The time limits for taking enforcement action are set out in section 171B of the Act. A breach of planning control consisting of operational development where substantial completion took place before 25 April 2024 becomes immune from enforcement action if no action is taken within 4 years of substantial

completion. As the Notice was issued on 4 January 2024 the Relevant Date is 4 January 2020.

12. The SoCG confirms that some of the walls of the former agricultural piggery building are both incorporated and retained within the building attacked by the Notice. I will refer to the appeal building as the New Building and the previous piggery building as the Old Building in this decision. It has been accepted by the appellants that the New Building required planning permission and none had been granted.
13. The appeal building was referred to as an agricultural building in the Planning and Design and Access Statement submitted in support of the Prior Approval application reference 23/00786/P3Q which related to its conversion to provide a three bedroom dwelling with garage. The Officer report notes that the building appears to have been rebuilt or significantly extended. The application was refused. It was not until oral evidence was given at the Inquiry that the purpose of the building was revealed. In oral evidence both appellants stated that the building was erected for use in connection with airsoft games¹. The building provided a base for one team/participant of the airsoft games to defend while being attacked by the other team/participant playing the game. The internal low level subdivision walls provided a place behind which the participant could hide/shield themselves from attack by the aggressor in the game.
14. The roof at the time of my site visit was open near the ridge. Remnants of what I understand to be Perspex sheeting that had been the roof finish at this part of the roof could be seen. The corrugated iron sheets had small holes, probably from nails which held the sheeting before it was reused for New Building. While some photographs show no door on the southern elevation entrance to the building there was a door installed in later photographs.

Appellants evidence

15. In addition to the written statements, including statutory declarations, the appellants provided oral evidence at the Inquiry. The oral evidence set out the purpose of the building for the first time.
16. The appellants have each produced a statutory declaration which attest to the building having been substantially completed before 3 January 2020. They also stated that by October 2019 a full roof was attached to the building. The full roof reference was to the roof with the Perspex sheets.
17. In oral evidence Mrs Watts recalled that her favourite apple tree was 'in full bloom' in August 2019 during the construction period and there was a family gathering for Bonfire Night in November 2019.
18. The appellants explained that the New Building was built on the site of a former building (the Old Building) and that asbestos had to be cleared from this former building. It was stored in sealed bags and all the sealed bags were removed from the site in May 2020.
19. The building was constructed for the purposes of being used in 'airsoft games'. Mr Watts and his children and their friends participated in the simulated war games. The building was used as a place to change and by one team as a base to defend

¹ Airsoft is a simulated war games which use airsoft guns to shoot projectiles at opposing players. Participants or teams are pitched against each other and fire the airsoft guns at each other.

from the other team. Mr Watts owns two airsoft guns and held a UK airsoft site licence (date recorded 20 April 2020).

20. The New Building had a full roof comprising Perspex sheets across the upper part. On 9 February 2020 both appellants confirmed in oral evidence that the transparent Perspex roof panels were damaged during of Storm Ciara². Broken Perspex roof panels are apparent in the aerial photographs in March and May 2020 and the site visit photographs of 12 February and 3 March 2020.
21. When the New Building was built the asbestos bags were either in the building or just outside the building. There were a 150 one metre square bags of asbestos material (150 cubic metres of waste). Mr Watts stated that the asbestos bags were stored in the building until due for collection. The asbestos bags were stored 'a good few weeks outside the building'. Airsoft participants did not use the building while the asbestos bags were there.
22. The appellants both stated that the building was not brought into use until the bagged asbestos waste material was removed from the appeal site in May 2020. Photographs show the bagged asbestos in March 2020 and that it was no longer seen in photographs by May 2020. Mr Watts stated he would not have let anyone go near the asbestos as it is deadly.
23. A door was installed in the entrance opening to the New Building in September 2023. The door was fitted as a deterrent to stop unauthorised kids and teenagers going into the New Building. The door was not required for the use of the New Building for airsoft games.
24. The New Building was used to store household items from Beacon Hill within the building occasionally, but this was not its primary purpose. Mr Watts stated in oral evidence that on two occasions he moved out the stored goods in order to use the New Building for airsoft games.
25. During Covid airsoft games were not played.
26. The corrugated iron used on the New Building was reused material. It had small fixing holes in it. The Perspex was purchased new from Wickes.
27. Mr Watts gave oral evidence that works of construction started in October 2019 and went on for 6 months.
28. Mrs Watts gave oral evidence that works of construction were most definitely completed in October 2019.

Council's Evidence

29. An aerial photograph dated May 2018 shows the appeal site cleared with an area of concrete to the south and some ruins of a building to the north of the concrete area. An aerial photograph dated June 2019 shows similar situation to the earlier photograph. There is clearly no New Building at this time.
30. The Council has confirmed that it received complaints relating to a structure being erected in August 2019 and September 2019. The appellants state that the New Building was completed by 3 January 2020.

² Storm Ciara occurred on 9 February 2020.

31. The Council has provided site photographs of the Old Building from January 2019 showing sections of the concrete blockwork base are missing and there is no roof or external walls above its base. Council photographs taken from some distance on 12 February 2020 show the building and missing Perspex upper parts of the roof.
32. Council photographs from 3 March 2020 show the New Building with a concrete blockwork base, metal sheets for the external walls, and metal roof with remnants of Perspex plastic elements. In the photographs a pile of white bags can be seen which I understand to be the bagged and sealed asbestos from the Old Building. A Council file note for the enforcement investigation reference 19/00176/ENF records a note from a site visit and site meeting with both the appellants. It states: *'Visited site and met owners Mr and Mrs Watts. The large structure is an old piggery that has been in situ for years. The structure is very run down and the owners have recently done a few minor repairs on the building to try and make it structural safe.'*
33. In the aerial photograph dated 9 May 2020 the white bags have been removed from the concrete area in front of the New Building. Council photographs of the site dated 22 September 2020 also confirm that the white bags were not on the concrete area in front of the New Building.
34. An aerial photograph dated 6 March 2020 clearly shows the New Building on the appeal site along with a pile of what I understand to be the white asbestos bags. Therefore, the New Building was erected between August 2019 and March 2020.
35. Photographic evidence from September 2023 demonstrates that the building had been used at times to store domestic paraphernalia.

Substantially Completed

36. As stated above, to succeed on ground (d) the appellants need to demonstrate, on the balance of probabilities, that the New Building was substantially completed before 4 January 2020. I accept that the oral evidence was very clear that the reason the appellants built the New Building was to provide a space for use with airsoft games. I appreciate that the oral evidence was the first time that the purpose of the building was set out by the appellants.
37. Based on the evidence available I accept that on the balance of probabilities there were Perspex roof panels on the roof of the New Building prior to date of the photographs of 12 February 2020. Those Perspex roof panels were damaged during Storm Caira on 9 February 2020, and that the remnants of those roof panels were visible in photographs taken around that time and after. I could also see the vestiges of those Perspex panels at my site visits. I also accept that the lack of a door on the southern elevation entrance to the New Building is not definitive as to whether or not the New Building was substantially completed. I am satisfied that the appellants did not need an entrance door to the New Building to substantially complete the New Building for its intended use for airsoft. The need for an entrance door arose out of the unauthorised use by kids and teenagers of the New Building. The door was installed when the kids and teenagers started using the building without permission. A door was installed in the entrance opening to deter these individuals from entering the building.
38. The phrase 'substantially completed' must be taken as having the meaning established by Lord Hobhouse in *Sage v SSETR & Maidstone BC* [2003] UKHL 22: in the case of building operations, what is required is 'a fully detailed building of a certain character, not a structure which is incomplete' (*Sage*). In this case the

- character of the New Building was as a building for use in airsoft games and thus must at the time of substantial completion as an airsoft building be capable of use for that purpose. The New Building does not have to have been used for the purpose to which it was to be put, but it has to have been capable of use for that purpose to be a fully detailed building of a character for airsoft use.
39. In *Sage*, the alleged building had no glazing, guttering, ground floor, access to the first floor, service fittings or internal finishes. The appellant argued that such works would be exempted from development under s55(2)(a) of the Act. In that judgement it was held that s55(2)(a) of the Act applied only in cases where the building is completed and then altered or improved. A building could not be regarded as substantially completed for the purposes of s171B(1) even if outstanding works affected only the interior.
 40. *Barry Devine v SSLUHC and Another* [2022] EWHC 2031 considered whether the building in that case was a new building or an existing building repaired. The conclusion was that the building was a new building. One of the significant building operations on the land constituting the new building was the 'entire roof over the northern and western wings' which had been replaced, and this was undertaken after the relevant date. Therefore, the building works which resulted in the new building were not substantially completed on or before the relevant date. In the current case, at the time of the Inquiry, the appellants accepted that the New Building is in fact a new building and not a repaired building.
 41. In order to understand whether a building operation has been substantially completed it is necessary to consider what constitutes a building operation. The erection of the New Building constituted a building operation. For the purposes of the Act a building operation includes demolition of buildings, rebuilding, structural alterations or additions to buildings and other operations normally undertaken by a person carrying on a business as a builder. A number of ancillary activities on a construction site or during the course of a building being erected, if considered in isolation, would not be a building operation within the meaning of section 55 of the Act. It is therefore a matter of fact and degree as to whether a particular activity does form part of an overall building operation.
 42. What is clear to me is that the Old Building materials and elements of it were on the ground at the time the appellants began to build the New Building. This included a quantity of asbestos waste material which formed part of the materials which had been used in the construction of the Old Building. Whether the Old Building was demolished or fell down, the clearing of the materials of the Old Building from the site was part of the building operation to construct the New Building. The asbestos material, when bagged up, amounted to a sizeable quantity of material. It can be seen in the aerial and site photographs in March 2020, as it is sited outside of the building on the concrete area. The oral evidence was that the asbestos material was stored within the New Building at times and then just outside the New Building for collection. The amount of material that had been bagged up during the course of the clearance of the site and construction of the New Building was not insignificant (about 150 cubic metres of waste).
 43. The removal of the parts of the Old Building that were not to be incorporated into the New Building was, in my view, part of a single building operation comprising the clearing of unwanted previous parts of the Old Building, while making good/retaining the internal low level subdivision walls and then erecting the building

that exists on site now. The removal of the asbestos waste was an integral, and indeed essential, part of the single building operation to construct the New Building.

44. The appellants confirmed that the New Building was not utilised until the asbestos waste was removed from the site as the building was not safe until that material had been removed. A particular point was made that the New Building was to be used by the appellants teenage and young adult children and their friends, and they did not want to expose them to the asbestos even though it was in thick plastic sealed bags. As such, it is clear to me that the removal of the asbestos waste was part and parcel of the single building operation to create the New Building, and the New Building was not substantially complete until the asbestos waste was removed.
45. There is no substantiated evidence of date when the asbestos waste material was removed from the New Building and placed in front of the structure. There are no aerial photographs or other site photographs that clearly show when the asbestos bags were placed outside the building. The asbestos bags were clearly seen in photographs in March 2020 outside of the New Building. The oral evidence of Mr Watts was that the asbestos bags were stored 'a good few weeks outside the building'. The asbestos bags were removed in May 2020 from the site. What is clear is that the asbestos bags prevented the use of the building before their removal as the appellants considered it was not safe due to this hazardous material being present either in or just outside the structure.
46. For the reasons set out above I find that the New Building was not substantially completed until the asbestos waste sealed bags were removed from within the building and may not have been substantially completed until the asbestos waste sealed bags were removed from the site. That, on the balance of probabilities, the asbestos waste bags were removed from the building and placed outside of the building, but adjacent to it, around March 2020 which was *a good few weeks before* their removal in May 2020. The New Building was therefore substantially completed at its earliest around March 2020 and its latest May 2020. Even with the earlier substantially completed date in March 2020 this was after the Relevant Date of 4 January 2020.
47. I therefore find that the appellants have failed to demonstrate, on the balance of probabilities, that the New Building was substantially complete for more than 4 years before the Notice was issued. The appeals on ground (d) therefore fail.

Appeal A on ground (a)

48. An appeal under ground (a) is that planning permission should be granted for what is alleged. In this case the allegation is the erection of a detached building. The New Building is open to the elements due to the damage inflicted by Storm Ciara. The work to repair the roof and make it water tight again would be minor works. I am satisfied that if planning permission were to be granted that a condition could be imposed in relation to the materials/finish of the replacement roof panels to reinstate the roof.

Main Issues

49. The main issues in this appeal are:
- Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; and

- If the proposed development constitutes inappropriate development in the Green Belt, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal

Whether the proposal would be inappropriate development

50. The New Building is sited on a parcel of land which was once used for agriculture, which historically had a pig pen and productive fruit tree orchards. There is no substantiated evidence of current agricultural use of the land, and there is no planning permission relating to any recreational or other use of the land. I consider that the New Building and the land that was used as orchards is within a separate planning unit to the residential property Beacon Hill and its garden which are also owned by the appellant and his wife.
51. The Government attaches great importance to Green Belts. Paragraph 142 of the Framework identifies that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 153 states that 'inappropriate development' is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Development in the Green Belt is inappropriate unless one of the exceptions set out in paragraph 154 or 155 applies.
52. Policy M12 of the Dartford Plan Dartford Borough's Local Plan to 2037 (adopted April 2024) (LP) is consistent with the relevant paragraphs of the Framework in relation to the aim of the Green Belt, objectives, purposes and essential characteristics of the Green Belt and what is inappropriate development. The 2024 revisions to the Framework in relation to the Green Belt are not considered by either party to alter the applicability of this policy, and I concur.
53. As set out above the New Building was erected for the purposes of airsoft games. The land on which the New Building is sited does not have planning permission for use for outdoor sport or outdoor recreation. Therefore, the provision of a building for airsoft use would not fall within the exception at paragraph 154 b) of the Framework, which relates to for the provision of appropriate facilities in connection with the existing use of the land or a change of use of the land for outdoor recreation purposes. As such, the New Building is inappropriate development in the Green Belt. The New Building is therefore, by definition, harmful to the openness of the Green Belt.

Other Matters

54. Section 177 of the Act provides that planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control whether in relation to the whole or any part of those matters. The allegation is the erection of a detached building. There is no reference to any use within the allegation.
55. The appellant states that I should have regard to section 75(2) of the Act which provides that where planning permission is granted for the erection of a building the grant of permission may specify the purposes for which the building may be used. Such a purpose will typically be specified in a planning condition.
56. There is currently no active agricultural use of the parcel of land on which the appeal building sits. While I accept that the use of the land for agricultural purposes

would not fall within the definition of development under section 55 of the Act, that is not the same as saying the use of the land is for agriculture. It is not clear, and is not a matter before me, whether there has been any unauthorised material change of use of the planning unit on which the New Building is situated between the time it was actively in use for agriculture (which appears to be many years ago) and now.

57. I have found, on the basis of the evidence presented, that the New Building was erected for the purposes of airsoft games. However, the appellant argues that planning permission should be granted for the New Building as its use should be conditioned to be for agricultural purposes.
58. The appellant does not, on the evidence available, operate any agricultural business or operation or carry out any agricultural activities either on the land or elsewhere. The appellant and his wife spoke about multiple agricultural ideas³ that the New Building could be put to.
59. In support of the potential agricultural use of the New Building, Inquiry Document 2 was provided via email from Mr Gray who is stated to be a farmer by the appellant's agent. Mr Gray provides his view on the number of laying hens, chickens, turkeys, ducks or pigs the New Building could accommodate based on it being 122 sq m in size. He also considers the availability of land to be about 1,100 sqm of orchard and 0.85 ha of open land available for agricultural purposes. In his opinion, the New Building could be used for storage of fruit and vegetables grown across the site. Furthermore, he does not believe the width of the door opening, at about 1.4m, is an impediment to small versions of plant and machinery, which could be associated with a small holding, being stored in the New Building. Mr Gray also considers, although he has not visited the building, that the low-level walls that formed part of the Old Building could be removed to create a more useable space for an agricultural use within the building.
60. The appeal building was not designed for agricultural use. However, in my view, almost any building could be put to an agricultural use, particularly if altered for that purpose. Mr Gray acknowledges that removal of the low level walls of the Old Building from the internal space would make it more useable so indicating adaption of what exists may be necessary or desirable.
61. The appellant's arboricultural assessment considers that in the 1960's aerial photographs indicate a typical layout of commercial fruit production. By 1990 much of the area had been colonised by broadleaved trees with a narrow strip of fruit trees remaining. By 2003 *'the trees would also have reached maturity as orchard trees such as apples have a short viable fruit production age of up to a maximum 25 years.'* The 2019 aerial image indicates clearance to removed dead fruit trees around the site of the appeal building's location. This indicates that the existing fruit trees are not likely to produce much of a crop. As such, I find that there is no agricultural use of the planning unit on which the New Building is sited, there are no crops which require storing, there is no demonstrable agricultural plant and machinery as there is no small holding in operation or agricultural activity undertaken by the appellant or his family.
62. The Framework states that conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice

³ Para 27 of Mr Fraser Closings.

Guidance advises that any proposed condition which fails to meet one of the six tests should not be used even if suggested by the applicant, members of a planning committee or third party. Even if all parties to an appeal agree to a condition being imposed, I as the decision maker will need to establish whether any condition would be necessary and meet all the other tests. It is always unreasonable to impose a condition which would nullify the benefit of the permission.

63. I accept that a planning condition may be imposed on any grant of planning permission for a building to specify the use of that building. However, the current case relates to a development that has taken place, namely the erection of a detached building. To impose a condition to retain the New Building only for a use that it was not designed for, that it has never been used for, and where there is no clear demonstration of what type of agricultural use the appellant would use it for is, in my view, unreasonable.
64. Furthermore, the imposition of a condition cannot require a use to begin it can only restrict the use to which the building is put. The argument put forward by the appellant is for a speculative use, a potential idea for an agricultural use, of an already constructed building. There is no subsisting agricultural activity carried out by the appellant or his family, it is a potential use that may or may not take place at some point in the future. In my view, on the evidence available, there is a strong potential that the building would remain unused.
65. As the proposed use is a speculative, potential idea for an agricultural use I consider that it would be inappropriate and unreasonable in such circumstances to impose a condition to limit the use of the New Building to agriculture.
66. I have also considered the imposition of a condition similar to that set out in sub paragraph (5) Part 6 Class A of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) which would require the removal of the New Building should the use of the building for the purpose of agriculture permanently cease within 10 years on the date of any grant of planning permission. However, this would be invalid as it would need to relate to an existing agricultural use and there is no existing agricultural use of the building.
67. I acknowledge the Council's concerns that if planning permission were granted for the New Building any subsequent proposal to reuse the building would not be inappropriate development in the Green Belt as set out in the current Framework. However, I must consider the deemed planning application on the basis of what is now and not what may or may not happen in the future.

Conclusion

68. The New Building is inappropriate development in the Green Belt that results in the encroachment of development in the countryside and the loss of openness. I find, on the available evidence, that planning conditions could not be reasonably imposed to overcome the planning harm of permitting the retention of the building. As such the development is contrary to LP Policy M12 and the development plan as a whole. It is also contrary to the Framework. The appeal on ground (a) fails.

Hilda Higenbottam

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Fraser Counsel instructed by Mr P Nicholls

Mr P Nicholls

Mr Watts Appellant

Mrs Watts Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms I Visagie Partner at Ivy Legal Ltd instructed by Dartford Borough Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Bhandal v SSHCLG & Bromsgrove DC EWHC 2724 (Admin) JPL 2021, 5, 611-621
2. Email dated 5 December 2024 from Mr P Nicholls enclosing the document from Michael Gray submitted by the Appellants