



Appeal Decisions

Site visit made on 15 April 2025

by **Richard S Jones BA (Hons), BTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

Appeal A Ref: APP/H2265/C/22/3306028

155 Pizien Well Road, Watringbury, Maidstone, Kent ME18 5HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Derek Ward against an enforcement notice issued by Tonbridge and Malling Borough Council.
 - The notice was issued on 11 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change in use of agricultural land to domestic curtilage by way of placement of domestic structure and paraphernalia.
 - The requirements of the notice are:
 1. To cease the use of the land shown hatched on Plan TMBC2 as domestic curtilage.
 2. To remove from the land shown hatched on Plan TMBC 2 any and all sheds, seating areas and all other domestic paraphernalia.
 3. Erect a wooden post and rail fence no taller than 1.5m at its highest point, to include a wooden five bar gate, between the existing domestic curtilage of 155 Pizien Well Road Watringbury and the land shown hatched on plan TMBC 2.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 (as amended). 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.
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Appeal B Ref: APP/H2265/W/22/3304544

155 Pizien Well Road, Watringbury, Maidstone, Kent ME18 5HX

- 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 Derek Ward against the decision of Tonbridge and Malling Borough Council.
 - The application Ref is TM/22/01029/FL.
 - The development proposed is described as “We wish to change use of agricultural land to residential garden use.”
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - Deleting the breach of planning control and its substitution with “Without planning permission, the material change of use from agricultural land to residential garden, facilitated by domestic structures and paraphernalia.”
 - Deleting the words “domestic curtilage” in requirement 1 and their substitution with “residential garden.”
 - Deleting requirement 3.

2. Subject to the corrections, 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.

Appeal B

3. The appeal is dismissed.

Preliminary Matters

Appeals A and B

4. The appeals relate to land to the rear of the original garden of the semi-detached dwelling at No 155 Pizien Well Road. The land originally formed part of a larger parcel of land which has been subdivided for use in association with Nos 153, 155, 157 and 159 Pizien Well Road.
5. Both appeals are linked to appeals¹ at No 157, similarly made against an enforcement notice and refusal of a planning application, for essentially the same development. However, as my decisions relate to two different properties with different appellants, I have decided to issue two separate decision documents.
6. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2024) and this is a material consideration which should be taken into account from the date of its publication. I therefore invited the parties to consider whether the revised Framework has relevance to the cases made. I have considered the responses made in my reasoning below.
7. I note the appellant's submission that in light of the revised Framework, the affected land should not be included within the Green Belt. However, the Green Belt boundary is beyond the scope of this appeal. Indeed, the Framework states that once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified through the preparation or updating of plans.

Appeal A

8. The appellant considers the Council's decision to issue an enforcement notice to be unjustified as an appeal against the decision to refuse planning permission had already been made (Appeal B). However, there is no reason why an enforcement notice should not be issued while a planning application or appeal remains undetermined.

Appeal A - The Enforcement Notice

9. The breach of planning control in the enforcement notice is "Without planning permission the unauthorised change in use of agricultural land to domestic curtilage by way of placement of domestic structure and paraphernalia."
10. However, the term curtilage describes an area of land that has an intimate association with a building; it does not describe what the use of the land might be. The allegation should therefore be corrected to refer to the use of land for residential purposes (as sought under Appeal B). It logically follows that the

¹ Appeal References: APP/H2265/C/22/3304085 and APP/H2265/W/22/3304885

corresponding requirement should also be corrected to refer to the breach in the same terms. The allegation should be further corrected to refer to a “material” change of use, as a breach can only arise from a change which is material. It would also be more accurate to describe the domestic structures and paraphernalia as facilitating the use, rather than by reference to placement.

11. The corrected breach should therefore read as, without planning permission, the material change of use from agricultural land to residential garden, facilitated by domestic structures and paraphernalia.
12. The appellant has not made an appeal on ground (f), that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach. However, the appellant considers it unrealistic for the Council to require the erection of a post and rail fence and a five bar gate between what is referred to as the existing domestic curtilage (which should read original garden) and the appeal site.
13. Having regard to the breach of planning control (as corrected) and the requirements of the notice, the purpose of the notice is evidently to remedy the breach. The scope of the notice is therefore limited by s173(4)(a) of the 1990 Act. Accordingly, the appellant cannot be required to undertake works that would go beyond remedying the breach, and the most that can be achieved is compliance with a planning permission or the restoration of the land to its previous condition. An enforcement notice cannot require improvements to the land, or a restoration beyond its previous condition.
14. In that regard, the Council does not show that previously there was a wooden post and rail fence and a wooden five bar gate between the original garden and the land subject to the enforcement notice. The requirement is therefore excessive, and the enforcement notice should be corrected by its deletion.

Appeal B on Ground (d)

15. An appeal under ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action.
16. To succeed, the appellant needs to demonstrate, on the balance of probabilities, that a material change of use of agricultural land to residential garden occurred ten or more years before the date of the enforcement notice, and then continued without material interruption for a period of at least ten years thereafter, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act. The material date is therefore 11 August 2012.
17. The land to which the enforcement notice relates was formerly part of a cobnut grove. The appellant states that he purchased it from his neighbour in February 2014 and legal transfer documents are provided which corroborate the same.
18. Prior to selling the land, the appellant states that the neighbour had not used the land for agricultural purposes and had instead used it as his residential garden. A letter from that neighbour confirms that he sold an area of land in 2014 to his neighbours at Nos 153, 155 and 157. He also says he had not used the land for any agricultural purpose and used it as a garden “at times”. The neighbour further states that he used to burn garden waste on the land and kept the grass cut and hedges trimmed to maintain it in a tidy, garden like fashion.

19. However, those submissions are insufficiently precise and unambiguous in terms of the extent of the land used and how it relates to the land subject to the enforcement notice. The combined area sold to the neighbours at Nos 153, 155 and 157 is significant so it is unlikely that all of the land was used as residential garden by the occupants of a single property (No 159). It may be that part of the combined land was used as residential garden, but I have very little to show how that related to the appeal site land.
20. Nor do I have evidence of the frequency, duration and nature of the use (save for burning garden waste). The appellant states that prior to purchase, the land was part of an old nut orchard and that some of the trees still exist, both within the appeal site and on land immediately to the north and south of it. Even if the cobnut trees had not been actively cultivated, maintained or harvested for 35 years, that does not necessarily mean that there had been a material change in the use of the land from agriculture. For that to have occurred there must have been some significant difference in the character of the activities from what had gone on previously as a matter of fact and degree.
21. The neighbour confirms that he lived in his property at No 159 for over 20 years and prior to that his parents owned and lived in the house. However, no clarification is provided in terms of when the purported use of the land as a garden commenced. Moreover, as an unsworn letter, it carries less weight than, for example, a statutory declaration to which sanctions apply.
22. It is not therefore shown that the activities carried out by the previous owner of the land resulted in a significant difference in the character of the activities from what had gone on previously, as a matter of fact and degree, so as to result in a material change of use of the land to residential garden.
23. It is likely, having regard to the submissions on the original garden size, that the land was purchased in early 2014 with the intention to use it as residential garden. However, I have little evidence of when actual use of the land commenced or the extent, duration and nature of the use. Even if actual use of all of the land commenced at the beginning of 2014, the evidence for the period before that, back to the material date of 11 August 2012, is insufficiently precise and unambiguous to show that the 10 year immunity period has been met.
24. The appellant makes further reference to the requirement of the enforcement notice to remove all sheds, seating areas and all other domestic paraphernalia. He argues that the Council's action fail under the four year time limits for enforcement action under s171B(1) of the 1990 Act, given that he has owned and installed the same since he acquired the land.
25. However, in the case of *Murfitt*² it was held that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the same, the notice may require that the 'ancillary' works are removed in order that the site is restored to its previous condition and the breach remedied. It follows from *Murfitt* that an enforcement notice so concerned may require the removal of facilitating works, even if those works otherwise would have been immune from enforcement action or are permitted development.

² *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

26. It was further held in *Somak Travel*³ that an enforcement notice could require the removal of works which did not amount to development at all but had facilitated an unauthorised material change of use.
27. The sheds, seating areas and all other domestic paraphernalia on the land evidently facilitate the use of the land as residential garden. The principles of *Murfitt* and *Somak Travel* therefore apply, and the enforcement notice is able to require those items to be removed.
28. I therefore find that on the date that the enforcement notice was issued, it was not too late for the Council to take enforcement action, on the balance of probabilities. The appeal on ground (d) fails.

Appeals A and B

Main Issues

29. The reason for issuing the enforcement notice, subject to Appeal A, and the reason for refusing the planning application, subject to Appeal B, are essentially the same. My reasoning below therefore relates to both appeals.
30. The main issues are:
 - whether the development would amount to inappropriate development in the Green Belt having regard to the Framework, relevant development plan policies, the effect on openness and the purposes of the Green Belt; and
 - if the development is inappropriate, whether any harm 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.

Reasons

Whether inappropriate development and the effect on openness and Green Belt purposes

31. The land falls within the Metropolitan Green Belt where Core Strategy⁴ Policy CP3 states that National Green Belt policy will be applied. As the policy requires the application of national policy, it cannot be considered to be out of date.
32. Paragraph 153 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
33. Paragraph 154 of the Framework sets out exceptions to development being considered inappropriate development in the Green Belt, including material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds) where they preserve its openness and do not conflict with the purposes of including land within it⁵.
34. Openness is identified in the Framework as one of the Green Belt's essential characteristics. It has a spatial aspect as well as a visual aspect.

³ *Somak Travel v SSE & Brent LBC* [1987] JPL 630

⁴ Tonbridge and Malling Borough Council Local Development Framework - Core Strategy – 25 September 2007

⁵ Paragraph 154.h)v.

35. The appeal site land is long and relatively narrow. Sited on the land are sheds, a summer house, swing seat, covered seat, a brick BBQ enclosure with countertop, a retaining wall to a feature sitting area, a chicken coop and various items of domestic paraphernalia, including tables and chairs.
36. I note the appellant's reference to the size of a single shed and a greenhouse (which was not there at the time of my site visit) relative to the size of the site. However, as explained, that is not all there is on the land. The structures and features in place at the time of my site visit have a clear spatial presence on an area of land which would otherwise likely be undeveloped and open, and it is not shown that the situation was materially different when the enforcement notice was issued.
37. The land is seen and perceived in combination with land similarly used to the rear of Nos 153, and 157, and likely from the upper floors of those residential properties. However, beyond that, those combined areas of land are relatively well-enclosed so that the structures are not seen from the road, the nearby public right of way or in wider surrounding views. In overall terms there is a small, but nonetheless perceptible loss of openness.
38. Moreover, the significant extension of residential garden land along with the structures and features which facilitate that use, into undeveloped former agricultural land (cobnut grove), conflicts with one of the purposes of including land within the Green Belt, namely assisting in safeguarding the countryside from encroachment.
39. Consequently, the use of the land would not meet the relevant exception of paragraph 154 of the Framework.
40. Paragraph 155 of the revised Framework introduces the concept of grey belt land where development in the Green Belt may not be considered inappropriate, subject to a series of criteria. For the purposes of decision-making, '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) of paragraph 143⁶ of the Framework, namely to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; and to preserve the setting and special character of historic towns.
41. The appeal site does not meet the definition of previously developed land as set out in the annex to the Framework, but it is common ground that the land does not strongly contribute to any of purposes (a), (b), or (d) of paragraph 143. I agree. The site is therefore grey belt for decision making purposes.
42. As the site passes through the gateway of utilising grey belt land then the criteria of paragraph 155 apply, all of which need to be met in order to qualify as not inappropriate development (save for criterion d., which relates to major development only). However, the appellant's evidence does not address these criteria.
43. Having established that the site meets the definition of grey belt land, it is necessary to consider the second element of criterion a. of paragraph 155, namely

⁶ The definition of 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, but I have no evidence to suggest that is applicable here.

whether its loss would fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan.

44. As discussed above, the site does not strongly contribute to Green Belt purposes a), b) and d). Purpose e) relates to urban regeneration so is not relevant. Nevertheless, for the reasons explained, the development does conflict with Green Belt purpose c), which is to assist in safeguarding the countryside from encroachment. However, the area concerned is small relative to the totality of Green Belt which covers nearly three-quarters of the Borough, and, having regard to the nature of the development, it would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. The development therefore meets criterion a. of paragraph 155.
45. Criterion b is that there is a demonstrable unmet need for the type of development proposed. I note that the appellant highlights that the Council cannot demonstrate a five-year supply of land for housing. However, the change of use does not involve the provision of housing; it merely extends the garden area of an existing house.
46. I recognise that the original garden area of No 155 is relatively small and that a larger garden is therefore more desirable. However, it is not demonstrated that a garden as large as that currently used meets an unmet need. Rather, the size of the garden now is disproportionally large, being 62m long. The development does not therefore meet criterion b. of paragraph 155.
47. Criterion c. is that the development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of the Framework. The Council's view is that this criterion is met, although no explanation is provided against the highlighted paragraphs, or any other part of the Framework. Having regard to the nature of the development involving the material change of use to residential garden, there is limited relevance to paragraph 110, which relates to promoting sustainable transport. For the same reasons, I do not see any issues arising from paragraph 115 relating to sustainable transport modes, access, the design of streets, parking and the transport network. Moreover, as the land is immediately adjacent to the original garden, the development is clearly sustainably located in relation to the existing dwelling at No 155. I therefore agree that criterion c. is met.
48. However, for the reasons explained, criterion b. is not met, and, as all criterion must be met, the material change of use of the land should be regarded as inappropriate development in the Green Belt for the purposes of the Framework and Core Strategy Policy CP3.

Other Matters

49. The appellant seeks to highlight that the Green Belt designation washes over villages within this and other local authorities. Nevertheless, the appeal site is located within the Green Belt and falls to be considered against the relevant policies of the Framework and development plan.
50. I note the appellant's reference to the Council's proposals for a new settlement of over 3,000 dwellings in the Green Belt but that, and any likely public benefits arising, cannot be reasonably compared to the change of use of land to residential garden.

51. I appreciate that if the land was used for agricultural purposes it may accommodate a larger building, but such buildings are not inappropriate development in the Green Belt.
52. The appeal site falls outside of, but immediately adjacent to the Pizien Well, Watlington Conservation Area. Part of the special character of the conservation area is evidently derived from its rural setting. The domestication of a former cobnut grove dilutes that. However, the land is visually well-contained and is experienced in relation to the residential use of the properties along this part of Pizien Well Road, which fall within the conservation area, including No 155. The use of the land therefore results in a neutral effect on the setting of the conservation area as a whole, thereby preserving the same.
53. I note the appellant's criticisms of the Council's response to the arguments submitted in support of the appeals. Nevertheless, I have considered both appeals afresh, having regard to all of the evidence before me and my own site visit, and my overall conclusions align with that of the Council.
54. I also note reference to the use of land at No 159 for agricultural purposes but that is not before me and is a matter for the Council. I have nonetheless considered the appellant's submission to the Council comparing the use of his land, which includes cherry, plum and apple trees, rhubarb, blackberry, blueberry and vegetable plots and a chicken coop.
55. Within that context I have also considered whether such matters amount to a ground (b) appeal (that a material change of use from agriculture to residential garden has not occurred) and (c) (that there has not been a breach of planning control). However, it appears, in the absence of evidence to the contrary, that the majority of the land is given over to purposes incidental to the enjoyment of the dwellinghouse, including summerhouse, BBQ area and sitting out area. Whilst the remainder of the land is given over to agricultural type uses, that too is of a type and extent which is incidental to the enjoyment of the dwellinghouse and which is normally found in a residential garden. Accordingly, it is more likely than not that a material change of use occurred.

Other Considerations and Green Belt Balance

56. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations⁷.
57. I have found that the use of the land for residential purposes facilitated by domestic structures and paraphernalia, amounts to inappropriate development within the Green Belt, and results in a small but perceptible loss of openness, as well as conflicting with one of the purposes of including land within the Green Belt, namely assisting in safeguarding the countryside from encroachment. The Framework requires that I apply substantial weight to those Green Belt harms.
58. Notwithstanding the above, I do recognise that the original garden is relatively small. It is therefore understandable that the appellant wanted to acquire additional

⁷ Paragraphs 153

land for use as residential garden. However, adding 62m to its length is disproportionate and unjustified.

59. Whilst the Council has not found harm to character and appearance, the living conditions of neighbouring residents or on matters of highway safety, the lack of harm is a neutral matter in the planning balance.
60. I very much appreciate and sympathise that the outcome of these appeals will be extremely disappointing to the appellant, who has clearly heavily invested in the land and likely takes great enjoyment from it. I further sympathise that the process will have caused stress and anxiety. I also note the lack of objection from the Parish Council and the support of neighbours and the local ward councillor. However, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
61. Although no evidence is provided to demonstrate a lack of agricultural viability for the land, I appreciate that, taken in isolation, it is unlikely to be a realistic proposition. However, the land forms part of a larger parcel of land which has been unlawfully subdivided for use as residential gardens. Whilst there is no direct access to the land from the road, it does lie immediately adjacent to a larger agricultural field, so at least in theory, it could be used in association with the same. In any case, the Council's reason for issuing the enforcement notice and refusing planning permission do not raise concern over the loss of agricultural land. The reasons relate only to Green Belt harms.
62. In that regard I find the harm to the Green Belt by reason of inappropriateness, and the substantial weight which should be applied to the same, is not clearly outweighed by other considerations and the very special circumstances necessary to justify allowing the appeals do not exist.

Conclusions

Appeal A

63. For the reasons given above, I conclude that the material change in the use of the land is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeal B

64. For the reasons given above, and having considered all other matters raised, I conclude that the material change in the use of the land is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Richard S Jones

INSPECTOR