



Appeal Decision

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 Ref: APP/H2265/W/22/3303034

153 Pizien Well Road, Waterringbury, 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 & Mrs Andrew Brunger against the decision of Tonbridge and Malling Borough Council.
 - The application Ref is TM/22/01120/FL.
 - The development proposed is retrospective application for change of use of land to residential amenity land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was 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. No response was received from the appellants. I have considered the Council's response as part of my reasoning below.

Main Issues

3. 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

4. The appeal relates to land to the rear of 145 to 153 Pizien Well Road, which was previously part of a larger parcel of land extending to the rear of No 159 but has since been subdivided for use in association with Nos 153, 155, 157 and 159. The

historical maps of the area show that, although within a different field, the original parcel of land and the land to the north and east, formed part of a wider orchard, rather than being separate and distinct as argued.

5. The appeal proposal is retrospective in nature and seeks planning permission for the change of use of land to residential amenity land, for use in association with the residential property at No 153. The land is accessed through a gap in a hedge at the rear of the original garden area of No 153.
6. The appeal sites fall within the Metropolitan Green Belt where Core Strategy¹ Policy CP3 states that National Green Belt policy will be applied. 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.
7. Paragraph 154 of the Framework sets out exceptions to development being considered inappropriate development in the Green Belt, including the provision of appropriate facilities (in connection with the existing use of land or a change of use), including buildings, for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it². Other exception forms of development include 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 too preserve its openness and do not conflict with the purposes of including land within it³. As the appeal relates to a change of use, that is the most relevant exception.
8. 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.
9. The appeal site land is broadly rectangular in shape. The western part of the site is largely covered by trees whilst the remainder of the land is largely open mown grass with ornamental planting and planted trees. Presently, the structures on site include a small chicken coop, a shed and visually lightweight glasshouses (two), a propagator and fruit cage.
10. Whilst those structures may have been on site for more than four years, it does not necessarily mean that they are immune from enforcement action under the provisions of s171B(1) of the 1990 Act, if they facilitate an unlawful use of the land. Rather, it was held in the case of *Murfitt*⁴ 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.
11. It was further held in *Somak Travel*⁵ 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.

¹ Tonbridge and Malling Borough Council Local Development Framework - Core Strategy – 25 September 2007

² Paragraph 154.b)

³ Paragraph 154.h)v.

⁴ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

⁵ *Somak Travel v SSE & Brent LBC* [1987] JPL 630

12. The structures referred to are more likely than not to facilitate the use of the land as amenity land. The principles of *Murfitt* and *Somak Travel* therefore apply. Accordingly, the evidence does not point to immunity from enforcement action, and I therefore apply very little weight to retaining those structures as a fallback position.
13. Because of their size and characteristics, the structures have a minor effect on spatial openness, despite being mainly positioned in the more open part of the site. Due to the established mature field boundary to the original larger parcel of land, the structures are not seen from the nearby public right of way or in wider surrounding views. Views towards the site from Pizien Well Road are restricted to the gap between Nos 145 and 151 and, even then, are largely screened by the mature tree and hedgerow boundary and the topography of the land. Consequently, it is only the closer shed that is potentially visible in filtered views from the road, during the winter months.
14. In overall terms, having regard to both the spatial and visual aspects, there is a very minor loss of openness to the Green Belt based on the current situation. However, if I were to allow the appeal there is potential for further structures to be erected on the land, by current or future occupants of No 153, thereby potentially elevating the openness harm. Whilst future development could in principle be controlled by way of condition, it would not affect the continued presence and addition of domestic paraphernalia.
15. In any event, the very significant extension of amenity land, with the structures and other domestic paraphernalia, into undeveloped former agricultural land, clearly conflicts with one of the purposes of including land within the Green Belt, namely assisting in safeguarding the countryside from encroachment.
16. Consequently, the use of the land would not meet the relevant exceptions of paragraph 154 of the Framework.
17. Paragraph 155 of the revised Framework introduces the concept of grey belt land where development in the Green Belt may not be considered inappropriate. 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.
18. The appeal site does not meet the definition of previously developed land as set out in the annex to the Framework, however, the Council accepts that the land does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. I agree. The site is therefore grey belt for decision making purposes.
19. As the site passes through the gateway of utilising grey belt land then the development should be considered against the criteria of paragraph 155, 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). As the appellants have

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.

not responded to my invitation to consider whether the revised Framework has relevance to their case, that criteria has not been addressed.

20. 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 whether its loss would fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan.
21. 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 lost 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.
22. Criterion b. is that there is a demonstrable unmet need for the type of development proposed. Whilst I recognise a larger area of amenity land is more desirable, particularly given the relatively small size of the original garden of No 153, it is not demonstrated that an area as large as that currently used meets an unmet need. Rather, the size of the amenity land/garden is now disproportionately large. The development does not therefore meet criterion b. of paragraph 155.
23. 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 amenity land, 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 of the Framework 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 153. I therefore agree that criterion c. is met.
24. However, for the reasons explained, criterion b. is not met, and, as all criteria must be met, the 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

25. 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. Although the domestication of a former cobnut grove dilutes that, many of the trees closest to the conservation area boundary have been retained. Moreover, 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 153. 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.

26. I have noted the appellants' concerns over the descriptions of the site, the use, the structures and the means of enclosure in the Council's statement, but I have determined the appeal based on all evidence before me, and my own observations at the time of my site visit.

Other Considerations and Green Belt Balance

27. 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.
28. I have found that the use of the land for residential amenity land, amounts to inappropriate development within the Green Belt, and results in a minor loss of openness (based on the existing facilitating structures), and conflicts 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 the Green Belt harms.
29. Being significantly elevated above Nos 145 and 151, the use of the land for residential amenity land results in greater opportunity for overlooking and resultant loss of privacy for the occupiers of those properties. The appellants explain that it is their intention to plant native hedging along the boundary of the site to those adjoining properties and I saw that some planting had occurred in that area by the time of my site visit. That will likely benefit biodiversity as well as provide additional screening. However, for the latter particularly, that would take some time to be effective. Moreover, given the relatively short extent of the planting, I attach limited weight to the likely biodiversity benefits arising, whilst any screening benefits would be a neutral matter, given that it merely mitigates harm arising from the use.
30. It is further argued that the occupiers of No 153 have no access to parks, open space or allotments, being within a rural location, so the additional amenity area provides these opportunities without having to rely on a car, thereby complying with Core Strategy Policy CP1 (sustainable development). However, the appeal property has a garden, albeit relatively small, so such private benefits attract limited weight.
31. Nevertheless, because the original garden is relatively small, it is therefore understandable that the appellants wanted to acquire additional land for use as amenity land. I also recognise that the use is likely to have significant benefits to the wellbeing of the occupants of No 153. That is evident in the care that has clearly been invested in the land.
32. However, at its widest point the land runs across the width of three residential plots, and also runs to a significant length. The addition of such an extensive area of land is therefore disproportionate and unjustified. I note the appellants' reference to other similarly sized gardens in the area, but the respective sizes are not provided, and it is not possible to satisfactorily gauge their nature and relative extent from the annotated aerial photograph.

⁷ Paragraphs 153

33. The appellants argue that the use of the land is closer to agricultural use than a normal domestic garden and is not formally landscaped or littered with brightly painted garden buildings used for a bar, home gym or sauna. The appellants say the land is used for growing fruit and vegetables and for keeping chickens.
34. In that regard, there are a significant number of cobnut and fruit trees on the land, but the area given over to the chicken coop is very small and if part of the land is given over to growing vegetables, that was not readily obvious. Moreover, to say the land is not landscaped or more akin to an allotment does not reflect my own observations of ornamental planting beds, potted plants, with ornamental iron arches, including one over a stone bench, set largely within a manicured lawn. Along with the domestic paraphernalia, the overall character and nature of the use reflects that of a large residential garden, rather than being agricultural in nature. Moreover, if I were to allow the appeal, the appellants or future occupants may seek to introduce further domesticating features.
35. The appellants refer to the Council's officer report for a LDC⁸ application which states that the land could not be considered as residential curtilage/garden. From that it is argued that the Council does not consider it has the appearance of a domestic garden. However, those considerations were made in the context of whether the land should be regarded as falling within the curtilage of No 153. As curtilage describes an area of land that has an intimate association with a building, rather than use, such a finding does not necessarily mean that it doesn't have a domestic appearance.
36. The development would not unduly erode the separate identity of settlements or result in harm to the character and appearance of the area. However, lack of harm is a neutral matter in the planning balance.
37. Even if the land has not been used for agricultural purposes for a number of years, that does not mean that it is no longer the lawful use. Moreover, even if the development does not significantly harm the supply of agricultural land, that again is a neutral consideration.
38. The appellants argue that the proposal accords with Core Strategy Policy CP14, but it is not shown that open recreation uses and associated facilities applies to private residential gardens. Even if it does, compliance with same is a neutral matter in the planning balance.
39. I very much appreciate and sympathise that the outcome of this appeal will be extremely disappointing to the appellants, who have clearly heavily invested in the land and likely take great enjoyment from it. However, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
40. 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 appeal do not exist.

⁸ Certificate of lawful use or development ref: TM/20/02681/LDE – The land at the rear of the property has been used as a garden for in excess of 10 years – Refused February 2021.

Conclusion

41. For the reasons given above, and having considered all other matters raised, I conclude that 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