



Appeal Decisions

Site visit made on 10 June 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 JUNE 2025

Appeal A Ref: APP/A4710/X/25/3360123

2 Crossleys Buildings, Halifax, HX3 9PY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Ms Iain and Emma Brew and Wilkinson against the decision of Calderdale Metropolitan Borough Council.
- The application ref 24/01062/191, dated 16 October 2024, was refused by notice dated 10 December 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is the continued use of the land as garden land ancillary to the dwelling.

Appeal B Ref: APP/A4710/W/25/3358525

2 Crossleys Buildings, Halifax, HX3 9PY

- 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 Dr Iain Brew against the decision of Calderdale Metropolitan Borough Council.
- The application reference is 24/01059/FUL.
- The development proposed is the change of use of land to residential garden land and construction of raised decking.

Decisions

Appeal A Ref: APP/A4710/X/25/3360123

1. The appeal is dismissed.

Appeal B Ref: APP/A4710/W/25/3358525

2. The appeal is allowed, and planning permission is granted for the change of use of land to residential garden land and construction of raised decking at 2 Crossleys Buildings, Halifax, HX3 9PY in accordance with the terms of the application, reference 24/01059/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Appeal A – LDC

Preliminary Matter and Main Issue

3. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. For an LDC to be granted under section 191 of the Act, the

burden of proving relevant facts rests on the appellant, and the test of the evidence is the balance of probability.

4. The Planning Practice Guidance states if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
5. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the 'L' shaped land shown within the red edge on the submitted location plan has been used continuously as a garden for at least ten years in association with the use of No. 2 Crossleys Buildings as a dwellinghouse, and hence whether it is lawful.

Reasons

6. The appellants claim that the land to which the LDC appeal relates has been continuously used as a residential garden from 2011 until 16 October 2024.
7. I have considered the statutory declarations submitted by the appellants as well as by the occupier of a relatively nearby property known as Bank Top. The evidence is that Mr Brew (i.e. one of the appellants) acquired the land from Mr Smith in August 2018. At this time, the land included the remains of some buildings/structures which had started to be demolished in 2015. The land was separated from other land associated with No. 2 Crossley Buildings by a curved stone wall, but the evidence is that there was an access to it through gates.
8. Mr Brew comments in his statutory declaration that *'the previous owner advised us that he had used this land as part of the garden to the property and he had always believed this land to be associated garden land – mainly used for storage outbuildings'*. The evidence is not precise or unambiguous in terms of the use of the outbuildings. The LDC application relates to the whole of the land within the red edge on the plan attached to the notice. It remains possible that these outbuildings may have been used for non-garden related purposes. I also emphasise that the appellants do not appear to have a clear understanding of the use to which the former outbuildings were put. Indeed, at final comments stage, they comment, *'the LPA inaccurately states that we claimed we had removed domestic buildings used for growing plants. We were clear that we did not know the use of the structures'*.
9. The burden of proof rests with the appellants. The statutory declarations submitted by the appellants do not include a level of precise and clear evidence in terms of explaining exactly how the land has been solely used as a garden and for a continuous period of at least ten years. There is uncertainty in terms of use of the outbuildings at the very least. Moreover, in the statutory declaration submitted by the owner of Bank Top, who has occupied his property since 2011, he says in respect of the appeal land, *'it did, however, seem to be and be treated by its owners as part of the garden of the property as its appearance changed with the seasons and due to some maintenance activity by owners such as the cutting back of shrubs and foliage and periodic weed control'*.
10. The use of the words *'seem to be'* does not, in my judgement, provide the necessary precision and unambiguous evidence to demonstrate actual use of the

land as a garden and, moreover, the owner of Bank Top, who has been a relatively nearby neighbour since 2011, does not actually provide any evidence or detail of actual day-to-day garden use/activity between 2011 and the date of the LDC application. The cutting back of shrubs and foliage, and periodic weed control, could of course take place on any land irrespective of its primary use. It does not in itself mean that the land has continuously been used as a garden. In addition, it is noteworthy that the owner of Bank Top states, *'this land had outbuildings on it'*. However, he does not provide any information relating to the use of such outbuildings.

11. The appellant comments that the land has historically included vegetable patches, a green house and a trampoline. The inclusion of a trampoline may of course suggest a garden use, at least on part of the land, but the aerial photographs do not precisely and unambiguously show the existence of a trampoline on the land for a continuous ten-year period. There may be evidence of what could be a trampoline in 2016 and up to 2019, but there is no precise or compelling evidence of a trampoline before 2016 or indeed in more recent years.
12. In respect of the appellants' claim that there were vegetable patches and a greenhouse on the land, the evidence does not include sufficient detail in terms of whether such vegetable patches and the greenhouse were actually used, and on a continuous ten-year domestic basis, and indeed whether they were historically used in association with No. 2 Crossleys Buildings. I acknowledge that Ms Wilkinson comments in her statutory declaration that *'Mr Smith also advised us that they had always been self-sufficient growing their own vegetables and pointed out the vegetable plots below'*. While Mr Smith may have said this to Ms Wilkinson, such a comment is not substantiated with sufficient objective or compelling evidence of the extent of such a claimed use, or indeed its continuous ten-year duration.
13. It of course remains possible that if fruit and/or vegetables were grown on the land, then it could have been for an agricultural use, as distinct from a domestic garden use. Indeed, section 336 of the Act states that the definition of agriculture *'includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly'*. I do not find that the evidence before me is sufficiently precise and unambiguous in terms of addressing this matter, although this is not a determinative issue in any event from the point of view of my conclusion on the main issue.
14. The aerial photographs that accompany this appeal do not provide a clear, precise and certain view in terms of the use of the whole of the land as a garden for at least ten years. Nor do the aerial photographs provide a clear or compelling picture of how the former outbuildings were used prior to them being demolished. It is noteworthy that demolition appears to have commenced from 2015.

Conclusion

15. For the above reasons, I conclude that the appellants' evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, a

continuous ten-year use of the land as a garden. Therefore, use of the land as a garden is unlawful. Hence, planning permission is required for such a use. In reaching this conclusion, I have considered the LDC appeal decision referenced by the appellants¹. I have determined this appeal on the evidence that is before me which differs from that considered for the other LDC appeal decision. Its existence does not therefore alter or outweigh my conclusion on the main issue.

Appeal B – section 78 appeal

Main Issues

16. The main issues are (i) whether the breach of planning control constitutes inappropriate development in the Green Belt, and (ii), if the development is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

Whether Inappropriate Development in the Green Belt

17. The application relates to the use of land as a residential garden in association with the residential use of No. 2 Crossleys Buildings and including the construction of a timber raised decked area. The application is made on a retrospective basis for development which has already been carried out. The evidence is that No. 2 Crossley Buildings has been extended to the side (i.e., a two-storey side extension)² and an ancillary outbuilding has been approved and constructed to the side and within its lawful garden area³. The appeal land falls within land designated as Green Belt.
18. The evidence is that prior to the unauthorised development occurring, a significant proportion of the land included outbuildings and structures. As a matter of fact and degree, I find that the site is previously developed land (PDL). The definition of PDL is contained in annex 2 (glossary) of the Framework. There is no evidence before me to suggest that the former outbuildings or structures were unlawful from an operational development point of view. PDL includes land which has been lawfully developed and is or was lawfully developed by a permanent structure and any fixed surface infrastructure with it including the curtilage of the developed land.
19. Even if one were to take the view that the land was grey belt, in so far that it does not strongly contribute to any of purposes (a), (b) or (d) in paragraph 143 of the National Planning Policy Framework (the Framework), the development does not meet the exception to inappropriate development in the Green Belt in respect of paragraph 155 of the Framework as each of criterion (a), (b) and (c) have to be met. While the use of the land as a garden (including a decked area) is clearly desirable for the appellant, it is not the case that there is a '*demonstrable unmet need for the type of development proposed*'. Consequently, I cannot conclude that the development is not inappropriate development in the Green Belt with reference to paragraph 155 of the Framework.
20. The relevant exception in this case is paragraph 154 (g) of the Framework which states that development in the Green Belt is inappropriate unless it involves

¹ APP/A4710/X/19/3224758

² Planning application reference 15/00358/HSE

³ Planning application reference 24/01058/HSE

‘limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt’.

21. I emphasise the word ‘*substantial*’ above in so far that the previous Framework used the words ‘*not have a greater impact on the openness of the Green Belt than the existing development*’, and because policy GB1 of the adopted 2023 Calderdale Local Plan (LP) includes the same wording. There is therefore conflict between policy GB1 of the LP and the Framework. Given the inconsistency, and considering paragraph 232 of the Framework, I afford policy GB1 of the LP limited weight in decision making terms and afford chapter 13 of the Framework full weight. This is not, in any event, a determinative matter given my reasoning below.
22. I acknowledge that the outbuildings and structures have now been removed, but in the context of what lawfully existed previously (i.e., PDL), coupled with the location and scale of the raised decked area, I do not find that it could reasonably be said that the development as a whole has caused substantial harm to the openness of the Green Belt. Even if one were to take the view that the baseline position is one where the structures/outbuildings had been demolished, and hence did not fully exist prior to the appeal development being carried out on the land, I do not in any event find that substantial harm has been caused from the development to the openness of the Green Belt.
23. The Courts have held that openness can have both a spatial and visual dimension. The garden area and decking are not very conspicuous from public view given the lower-level position relative to Beacon Hill Road, coupled with the planting that has taken place. The decking is partly visible from Beacon Hill Road when the gates to the neighbours sloping drive are open, but the planting that has occurred on the common boundary will, when it matures, screen such glimpsed views. I accept that the retrospective development includes some gabion baskets/earth filled hessian bags, raised planters and steps, which have volume, but neither these additions nor the scale/volume of the raised decking is such that it causes substantial harm to the openness of the Green Belt.
24. I also accept that part of the land is capable of being used for car parking as was evident on my site visit. However, any such car parking would be intermittent and, in this case, has only a limited impact on the openness of the Green Belt. Moreover, it is noteworthy that this part of the land included several buildings/structures in the past.
25. I fully acknowledge that if planning permission were approved, then it would, in turn, mean that the land could lawfully be used as a garden area. Based on its intimate use and association with the use of No. 2 Crossleys Buildings, it would then form part of the lawful curtilage of this dwellinghouse. In this regard, it would then remain possible that householder and/or means of enclosure permitted development rights could be utilised on the land, thereby potentially causing unacceptable harm to the openness of the Green Belt. Indeed, such development could take place in the context that an outbuilding and a two-storey side extension has already been approved and constructed in respect of the use of No. 2 Crossleys Buildings as a dwellinghouse.

26. However, the concern above is a matter which could be controlled by condition which removes specified national permitted development rights. Indeed, such a condition has been agreed by the appellant. In the context of paragraph 55 of the Framework, I find that there is clear justification for removing specified national permitted development rights both in respect of the erection of outbuildings and the provision of new means of enclosure.
27. For the above reasons, I conclude that the development does not amount to inappropriate development in the Green Belt. Paragraph 154 of the Framework states that it is only necessary for one exception to apply to development for it to not be inappropriate development in the Green Belt. Subject to the imposition of a condition, I find that the development accords with the Green Belt requirements of the Framework, and policy GB1 of the LP. I do not find that the development has a greater impact on the openness of the Green Belt than the existing development, but, in any event, the weight that I afford to this policy is less than the Framework which requires the decision maker to consider whether the development would cause substantial harm to the openness of the Green Belt. I find that the development does not cause substantial harm to the openness of the Green Belt.
28. In reaching the above conclusion, I note that the local planning authority raises no concern in respect of the effect of the development on the character and appearance of the area. I have no reason to depart from this position and, in fact, I was able to experience on my site visit that the garden was well designed, assimilated appropriately into its surrounding area, and represented a visual improvement relative to the character and appearance of the land in previous years. The use of chippings for the car parking area is acceptable for this countryside location. The planting on the site is such that the raised decking, baskets, planters and earth filled hessian bags are not prominent or intrusive in the landscape. In this regard, I conclude that the development accords with the design requirements of policy BT1 of the LP.

Conditions

29. The development has already commenced. Consequently, it is not necessary to impose a commencement of development time condition.
30. In the interests of the openness of the Green Belt, there is clear justification for removing specified national permitted development rights. This condition has been agreed by the main parties.
31. In order to ensure that the decked area remains as a relatively inconspicuous structure in the landscape, it is necessary that the laurel and bamboo hedge/planting is retained and replaced should it be removed, die, or become damaged or diseased. This condition has also been agreed by the main parties.

Conclusion

32. For the reasons given above, I therefore conclude that the appeal should be allowed.

Overall Conclusions

Appeal A Ref: APP/A4710/X/25/3360123

33. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the continued use of the land as garden land ancillary to the dwelling was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B Ref: APP/A4710/W/25/3358525

34. For the reasons given above, the appeal should be allowed.

D Hartley

INSPECTOR

Appeal B Ref: APP/A4710/W/25/3358525 – Schedule of Conditions

1) The existing laurel and bamboo hedge/planting immediately adjacent to the approved raised decking shall be permanently retained. If any part of it dies, is removed, or becomes seriously damaged or diseased, it shall be replaced in the next planting season with planting of similar size and species and in the same location.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) (GPDO), no development shall be carried out within class E of Part 1 of Schedule 2 of the GPDO, and class A of Part 2 of Schedule 2 of the GPDO, other than expressly authorised by this permission.