



Appeal Decisions

Site visit made on 14 October 2025

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2025

Appeal A Ref: APP/G5180/C/23/3334599

Lower Bell, Petleys Farm Luxted Road, Downe, Orpington BR6 7JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr P Lapper against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 2 November 2023.
- The breach of planning control as alleged in the notice is *without planning permission a material change of use of the land from agriculture to residential*.
- The requirements of the notice are:
 - (a) Cease using the land for residential purposes
 - (b) Remove the fence enclosing the land
 - (c) Restore the land to its condition before the breach of planning control took place
- The period for compliance with the requirements is: *Within two months after the notice takes effect*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Appeal B Ref: APP/G5180/C/23/3334600

Lower Bell, Petleys Farm Luxted Road, Downe, Orpington BR6 7JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr P Lapper against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice was issued on 2 November 2023.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 15/03448/FULL1 granted on 17 June 2016.
- The development to which the permission relates is *change of use of 'Long Barn' to provide two separate four-bedroom residential dwellings with associated amenity space and landscaping*.
- The conditions in question are nos 2 and 3 which state that:

Condition 2:

Details of a scheme of landscaping, which shall include the materials of paved areas and other hard surfaces, including parking areas, shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development hereby permitted. The approved scheme shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.

And

Condition 3:

Before any part of the development hereby permitted is first occupied boundary enclosures of a height and type to be approved in writing by the Local Planning Authority shall be erected in such positions along the boundaries of the site(s) as shall be approved and shall be permanently retained thereafter.

- The notice alleges that the conditions of the original permission have not been complied with, in that the appellant has not fully implemented the boundary treatment, nor the landscaping scheme approved under a subsequent details pursuant application (Ref: 15/03448/CONDIT).

- The requirements of the notice are:
 - (a) *Implement the landscaping scheme approved under reference 15/03448/CONDIT 1*
 - (b) *Erect a post and rail fence 1.5 m in height along the length of the northern boundary:*
 - (c) *Plant 1 m tall whips of Hawthorn 'Crataegus Monogyna' in double staggered rows at a distance of 300 mm along the length of the northern boundary.*
 - The period for compliance with the requirements is: *2 months after the notice takes effect.*
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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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Formal Decisions

Appeal A

1. The Appeal A 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.

Appeal B

2. It is directed that the enforcement notice is varied by:
 - At Section 5 of the enforcement notice deleting requirements (a), (b) and (c), to substitute the following new wording in order that there is a single requirement under 5.(a) which reads as follows:

“Implement the landscaping scheme approved under reference 15/03448/CONDIT, insofar as it relates to the fencing and planting along the northern boundary”
 - At Section 6 of the enforcement notice replace 2 months with 6 months so that the time for compliance reads as follows:

“Within 6 months after this notice takes effect.”
3. Subject to these variations, 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.

Preliminary Matters

4. Whilst the appeals relate to separate enforcement notices (ENs) and different alleged breaches of planning control, they have been made by the same appellant and relate to the same land. Therefore, to minimise duplication and repetition, I have dealt with them together in one decision letter.

Appeal A on ground (a), the deemed planning application

5. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and
 - 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 proposal.

Reasons

Whether inappropriate development

6. Policy G2 of the London Plan (LP) adopted March 2021 seeks to protect the Green Belt from inappropriate development. Policy 49 of the London Borough of Bromley Local Plan (BLP) adopted January 2019 highlights that inappropriate development will not be permitted in the Green Belt, unless very special circumstances are demonstrated which are concluded to outweigh the potential harm, including harm to the openness of the Green Belt. It also sets out a number of exceptions. These development plan policies are generally consistent with the Framework.
7. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 154 of the Framework establishes that buildings and other forms of development would be inappropriate unless they meet a listed number of exceptions. The exception most relevant to this appeal is: 154.h) v. material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
8. The appeal site represents a change of use of part of an agricultural field to use as an extension to a private residential garden. This change of use occurred when the appellant and their neighbours purchased approximately, 40 feet of additional land beyond their northern boundaries as extensions to their residential curtilages.
9. Caselaw¹ confirms that residential uses do not fall within the exception at paragraph 154.h) v. Nevertheless, the appellant has highlighted other Inspector decisions² in Bromley where the Inspectors found the use as a residential garden was an acceptable change of use. Be that as it may, I afford these decisions only modest weight, as these run contrary to the established caselaw and consider that as there is a change of use from agricultural land to residential use, this would not be an exception to paragraph 154.h) v.
10. Even if, a residential use did fall within this exception, it would need to meet the secondary requirements in respect to the preservation of the openness of the Green Belt and the purposes of including land within it. The openness of the Green Belt has both a spatial and visual aspect³.
11. The appeal site is relatively well-enclosed and has limited views from the road or other public vantage points given its rear location. At the time of my visit the appeal site and original garden area were fenced off from the surrounding Green Belt with a timber post and rail fence, a style typical of a rural environment. The area inside the enclosure consisted of mown grass and was relatively open. Whilst the area of the appeal was free from development and domestic paraphernalia, the original garden area contained several domestic objects. This consisted of various items such as a football goal, patio, chairs, tables, posts with external lighting and two storage cabinets.
12. Whilst the appeal site itself contained no buildings, structures or other features that would affect the openness of the Green Belt, the existing enclosure and potential

¹ RB of Kingston upon Thames v SSLUHC [2023] EWHC 2055 (admin)

² PINS Refs: APP/G5180/W/22/3301749, APP/G5180/W/24/3346681, APP/G5180/W/24/3345141 and APP/G5180/W/24/3345140

³ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

for increased domestic paraphernalia to be located within it, would provide a further limited, but a nonetheless perceptible loss of openness. These domestic changes cause moderate harm to the visual and spatial openness of the Green Belt when compared to the situation prior to development.

13. The appellant has suggested that the use of domestic paraphernalia could be prevented through a suitably worded condition. Any condition would be required to meet the six tests⁴. However, the specific manner in which such paraphernalia are used/sited would be neither practical nor realistic to enforce. Therefore, the condition would not meet the enforceable test, nor would it be reasonable to restrict domestic paraphernalia. Moreover, I do not consider that any such condition would satisfactorily address the moderate harm to the openness of the Green Belt for which I have identified.
14. Again, even if a suitably worded condition could be devised to meet the six tests, the extension of the residential garden into the previous agricultural land, conflicts with one of the purposes of including land within the Green Belt, namely, to assist in safeguarding the countryside from encroachment. Consequently, the use of the land would not meet the relevant exception of paragraph 154 of the Framework.
15. Paragraph 155 of the Framework provides for 'grey belt' land, where development in the Green Belt should not be regarded as inappropriate, subject to further criteria. Grey belt is defined in the Framework 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 143,"* of the Framework. These purposes include (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging into one another; and (d) to preserve the setting and special character of historic towns.
16. I requested parties' comments in respect to paragraph 155 and its relevance to the appeal case, and I have given their responses due consideration. The appeal site would not represent previously developed land (PDL) as defined in the Framework⁵. From my site observations and from the evidence before me, the appeal site would not be considered PDL as it is an area of land which appears devoid of any permanent structure. I acknowledge the site is within the curtilage of Lower Bell, however in my view, the existing materials do not constitute permanent structures and therefore does not meet the Framework's definition of PDL.
17. Whilst not PDL, the appeal site does not strongly contribute to any of purposes (a), (b), or (d) of paragraph 143, and would therefore be considered grey belt. As the appeal site would be considered grey belt, the proposal would need to meet all of the criteria of paragraph 155 in order for the proposal to qualify as not inappropriate development.
18. As stated above, the appeal site does not strongly contribute to Green Belt purposes a), b) and d), and criterion e) would not be applicable here given the development is for a modest extension to a residential garden. Whilst I have found that the proposal conflicts with one of the purposes of including land within the Green Belt, namely, to assist in safeguarding the countryside from encroachment, this would be relatively modest given its residential purpose. As such, it would be difficult to regard this as fundamentally undermining the purposes (taken together)

⁴ Paragraph 57 of the Framework and Paragraph: 003 Reference ID: 21a-003-20190723 of the PPG

⁵ Annex 2

of the remaining Green Belt across the area of the plan. Consequently, the development would comply with criterion 155.a.

19. Criterion 155.b. sets out that there needs to be demonstrable unmet need for the type of development proposed. The development is for an extension to an existing residential garden, and I acknowledge the original garden is relatively small. However, other than the desirability of a larger garden for the appellant, I have little evidence before me that would demonstrate any unmet need as required by criterion 155.b. of the Framework.
20. Criterion 155.c. is whether the development would be in a sustainable location, with reference to paragraphs 110 and 115 of the Framework. Given the development is for a modest residential garden extension, I find that there would be little relevance to either paragraphs 110 or 115, which relate to sustainable locations and sustainable transport modes, access, the design of streets, parking and the transport network respectively. Nevertheless, the appeal site is not located in an isolated location and is relatively sustainable. Additionally, criterion 155.d. only applies to “*major development*” as defined in the Glossary at Annex 2 of the NPPF, which this development is clearly not.
21. As not all of the criteria of paragraph 155 have been met, the material change of use should be regarded as inappropriate.

Very Special Circumstances and Green Belt Balance

22. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. I have also concluded that the appeal scheme would result in limited harm to the openness of the Green Belt, for which the Framework requires substantial weight to be apportioned.
23. Other than the requirement for a larger private garden, the appellant has not put forward any very special circumstances and therefore, the benefits do not clearly outweigh the harm which would be caused to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist and the proposal would conflict with the Framework, policy G2 of the LP and policy 49 of the BLP as outlined above.

Conclusion on ground (a)

24. For the reasons given above the appeal on ground (a) fails.

Appeal A on ground (f)

25. This ground is that the requirements of the EN exceed what are necessary to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. Having regard to the requirements, it is clear that the purpose of the EN under Appeal A is to remedy the breach of planning control.
26. The purpose of the EN includes ceasing the use and removing the timber fencing from the land. This provides for the complete removal of the existing development. The appellant proposes an alternative arrangement, to retain the existing fencing and provide an additional fence along the original boundary line depicted in the

approved drawings attached to the original planning permission⁶. This would in effect create a small enclosed “pen” like structure adjoining the northern boundary which is proposed to be used as a wildflower meadow or similar.

27. I acknowledge that the use of the area for such purposes would provide benefits for biodiversity and the local ecology. However, I have found that the existing fence in this location provides limited harm to the openness of the Green Belt. The provision of another fence and creation of the “pen” would enable further impact on its openness, and additional encroachment within the Green Belt. Consequently, the breach of planning control would not be remedied. This would not achieve the purpose of the notice, nor would the land be restored to its condition before the breach took place. As a result, the lesser steps proposed by the appellant are not an obvious alternative to the EN requirements of Appeal A.
28. I have found that the development would be inappropriate development within the Green Belt and that very special circumstances to justify the development do not exist. I have also found that any benefits do not clearly outweigh the harm which would be caused to the Green Belt. Given my findings, I cannot therefore conclude that the retention of the existing fence in its current position, would be acceptable here, as it harms the openness of the Green Belt and the purposes of including land within it.
29. Overall, the steps set out in the notice are not excessive; they are proportionate and commensurate to the breach of planning control, being the minimum that is required to restore the property to its condition prior to the breach taking place.
30. Consequently, the ground (f) appeal fails for Appeal A.

Appeal A on ground (g)

31. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the notice for compliance in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed. The appellant contends that a period of 6 months is the minimum needed to undertake the requirements of the notice.
32. With regard to Appeal A, the operational works consist of the demolition of the existing timber post and rail fence and erection of a new fence along the original boundary line. The works required by the EN would be within the capabilities of a competent person within the building trade and could be undertaken within 2 months of the date of this decision. As such, a 2 month period would achieve a reasonable and proportionate balance between securing compliance and the appellant's ability to carry out the work.
33. Therefore, the ground (g) appeal for Appeal A fails.

Appeal B on ground (a), the deemed planning application

34. The deemed planning application under Appeal B consists of ‘*change of use of Long Barn to provide two separate four-bedroom residential dwellings with associated amenity space and landscaping*’, without complying with conditions 2 and 3. In not complying with these conditions this would effectively grant

⁶ London Borough of Bromley Planning Ref: 15/03448/FULL1

retrospective planning permission for the landscaping scheme which is in situ on site at the moment.

35. Both Appeal A and B are intrinsically linked. Under Appeal A I have found that the retention of the fence in its current position, would not prohibit the unacceptable and unauthorised material change of use to a residential garden. I therefore find that conditions 2 and 3 would need to remain attached to the original permission 15/03448/FUL1 for the permission to remain lawful.
36. Furthermore, given the Council has approved details⁷ pursuant to condition 2 for a landscaping scheme, the current development also breaches these discharged details. I note both parties' comments in respect to aspects of the existing development now being acceptable, despite not being in accordance with the approved details, however it is best placed to deal with these under the ground (f) appeal below.
37. Accordingly, the ground (a) appeal for Appeal B fails.

Appeal B on ground (f)

38. As with Appeal A, the purpose of the EN subject to Appeal B is also to remedy the breach of planning control. The appellant has confirmed their agreement to reinstate the boundary fence along the boundary line as shown in the approved details, by effectively repositioning the existing post and rail fence into its original position. This would be appropriate, given my findings in respect to Appeal A.
39. It has been brought to my attention that some of the details, including the parking area to the side of the house and a modification to the patio area are also not in accordance with the details approved under application 15/03448/CONDIT. However, both parties agreed that these minor alterations do not cause material harm, nor do they conflict with the relevant policies and their objectives. I would concur with this assessment, and as a result will vary the EN under Appeal B accordingly.
40. Overall, subject to the variation the steps set out in the notice are not excessive; they are proportionate and commensurate to the breach of planning control, being the minimum that is required to restore the property to its condition prior to the breach taking place.
41. Consequently, subject to the variation the ground (f) appeal fails for Appeal B.

Appeal B on ground (g)

42. The appellant contends that a period of 6 months is the minimum needed to undertake the requirements of both notices. With regard to Appeal B, the appellant contends that if the appeal is unsuccessful, the requirements to plant the Hawthorn hedging would be dependent on weather and seasonal conditions and raises concerns about having to do so outside of the planting season.
43. I accept that a longer period might be required to ensure that the hedging is given sufficient time to bed in and become established. Accordingly, I find a more reasonable period for compliance would be 6 months, and so I will vary the EN accordingly.

⁷ London Borough of Bromley Planning Ref: 15/03448/CONDIT

44. To this extent, the ground (g) appeal on Appeal B succeeds.

Overall conclusions

45. For the reasons, given above, I conclude that the appeals should not succeed.

46. For Appeal A, I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

47. For Appeal B, I shall uphold the enforcement notice, with variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Robert Naylor

INSPECTOR