The Planning Inspectorate

Appeal Decisions

Inquiry held on 30 and 31 July 2024
Site visit made on 30 July 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2024

Appeal Refs: APP/Q3630/C/23/3326778 & APP/Q3630/C/23/3326779
20 Wey Meadows, Addlestone, Weybridge KT13 8XY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr R.J.M. Black and Ms Y Williams against an enforcement notice issued by Runnymede Borough Council.
- The enforcement notice was issued on 26 June 2023.
- The breach of planning control as alleged the notice is: Without planning permission, the erection of a new dwelling.
- The requirements of the notice are to:
  (i) Demolish and remove the dwelling from the Land; and
  (ii) Remove all waste and resultant material from the Land.
- The period for compliance is six (6) months from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered

Formal decision

1. It is directed that the enforcement notice be varied by extending the period of compliance from six to nine months. Subject to this variation 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.

Application for Costs

2. An application for an award of costs was made by Runnymede Borough Council against Mr Black and Ms Williams, This application is the subject of a separate decision.

Procedural Matters

3. At the outset of the Inquiry, following a discussion as to the legal definition of a caravan as set out in section13(2) of the Caravan Sites Act 1968, amended by the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006, the appellants acknowledged that the L-shaped unit exceeded the specified maximum width allowed of 6.8 m.

4. Notwithstanding the above, although it was explained that the unit was constructed in two separate sections on the site, then linked together, the appellant told the Inquiry that it could not be moved from the site as a single unit. This provides further confirmation that the unit in situ could not be considered as a caravan.

5. Upon this realisation, the appellants have accepted that the breach had occurred as a matter of fact, and also that planning permission was required for the unit's lawful retention. In other words, it was agreed that the unit was a building, rather than a caravan and, accordingly, both the ground (b) and ground (c) appeals were withdrawn during the appellants' opening submissions.

Background

6. The appeal site falls forms part of a wider area of land which, was divided into individual plots in association with a 1962 planning permission for a caravan site. Plot no 20 was identified as accommodating a single caravan, and is of relatively narrow width.

The appeal on ground (a) – the deemed planning application (DPA)

7. The site lies within the Green Belt, and the stated reasons for issuing the enforcement notice against the development carried out relates solely to the site falling within such designated land. Accordingly, the main issues are:

   1) whether it constitutes 'inappropriate development' within the Green Belt and, if so, the effect on its openness; and

   2) if it is inappropriate development, whether the harm by reason of inappropriateness, and by reason of any other identified harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

8. With regard to the second matter I have highlighted the potential of flood risk as possible significant harm arising such as to be considered as a main issue, and I expressed this at the Inquiry. The reasons cited for issuing the enforcement notice were though limited to the development being within a Green Belt location, and the Council had not previously raised flood risk as a particular consideration.

Reasons

Whether it is inappropriate development

9. Paragraph 154 of the National Planning Policy Framework (the Framework) opens by indicating that the construction of new buildings is inappropriate development within the Green Belt.

10. For the purposes of the Framework inappropriate development in the Green Belt is, by definition, harmful to the Green Belt, and should not be permitted unless 'very special circumstances' exist to outweigh the harm caused. Accordingly, paragraph 153 of the Framework indicates that, when considering planning applications, substantial weight should be given to any harm to the Green Belt.

11. Paragraph 154 goes on to list some limited exceptions to development termed as inappropriate within Green Belt locations. Point (g) thereto, is relied on by the appellants to justify the development, and refers to one such exception as being the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt than the existing development.

12. Very recently, on 30 July 2024, the new government published a consultation document on proposed reforms to the Framework. The government's suggestion is that Paragraph 154(g) should be re-worded, substituting *'…which would not have a greater impact on the openness…'* with *'…which would not cause substantial harm to the openness.'*

13. In accessing the appeal site it is necessary to pass alongside a small holiday park, which, from those I witnessed, is comprised of mobile homes. The access drive then narrows and bends round passing the rear of the site, which is one of several, narrow plots that slope gently down towards the River Wey, and accommodate smaller mobile homes and associated outbuildings. The access driveway ends as a cul-de-sac, at which point there are a number of large timber-framed mobile homes with curtilages clustered round. In fact, most of these appear to be of significantly greater floorspace than the appeal building.

14. The appeal site contains the L-shaped building, albeit of limited width, which is used for residential purposes. There is also a degree of permanence in that the building is raised by means of a series of breeze-blocked piers, whose bases are sunken below ground. Also present is a small, detached building, described by the appellants as a 'studio' and a shed which both stand close to the entrance gate.

15. The studio, though, is not targeted by the enforcement notice as the Council accepts it is immune from enforcement action due to the passage of time. When entering the site, of particular note is a lengthy, timber-framed structure within the plot immediately to the west, the design of which, with a centrally ridged roof, denotes a mobile home.

16. Beyond this, the initial impression of the immediate vicinity is an area of medium to heavy verdure, but with a significant degree of residential development within provided by the stationing of mobile homes, many of which are of relatively substantial size, but, on the face of it, still satisfy the legal definition of a caravan. The character is therefore consistent with the wider site's historical planning permission as a caravan site.

17. In the judgement of *R (Timmins) v Gedling BC* [2015] EWCA Civ 10 Lindblom LJ stated:

    "The distinction between development that is 'inappropriate' in the Green Belt and development that is not 'inappropriate' governs the approach a decision-maker must take in determining an application for planning permission. Inappropriate development in the Green Belt is development 'by definition, harmful' to the Green Belt – harmful because it is there – whereas development in the excepted categories in [the Framework] is not"

18. There is no evidence before me to suggest that the appeal site has been occupied previously, and lawfully, by a permanent building and, in the absence of such, the site cannot be termed previously developed land. The said exception under paragraph 154(g) cannot therefore apply. Accordingly, I must conclude that, for the purposes of the Framework, the building represents inappropriate development within the Green Belt.

Openness

19. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis.

20. To illustrate, in the judgement of *John Turner v Secretary of State for Communities and Local Government*, heard in the Court of Appeal, it was said that the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if development occurs and also factors relevant to the visual impact on the aspect of openness which the Green Belt presents. A 2020 judgement (*Samuel Smith Old Brewery and others v North Yorkshire CC)* concluded that matters relevant to openness in any particular case are a matter of planning assessment, so whilst visual impact can be relevant to openness it is not necessarily relevant in all cases.

21. As mentioned, the appeal site is part of a larger area of land which enjoys planning permission as a caravan site, and the fact that there are a number of units in near proximity, many larger than the building at issue, but which satisfy the wide-ranging definition of a caravan. In this context I consider that the effect on the Green Belt's openness is reduced.

22. In an attempt to assist their case the appellants have offered to remove the small studio building and considers that, were I minded to grant planning permission, a condition could be imposed to this end. The Council disagrees – in fact, the Council is of the view that no conditions could be reasonably, nor lawfully, imposed to make the development acceptable – and I am of similar mind. As I said at the Inquiry the correct mechanism to ensure the studio's removal would be by way of a unilateral undertaking submitted to this effect, yet no such document has been produced. Nonetheless, from my findings, I do not consider that removing the studio would be materially significant should the main building remain. In other words, removal of the studio would have little or no bearing on maintaining the Green Belt's openness in this particular setting.

23. It does not automatically follow that any material change in planning terms arising from development undertaken will unacceptably affect the openness of the Green Belt and I have taken into account here the building's permanence. Also, at my site visit, it appeared to me that some mobile homes in the vicinity have taken on the appearance of permanent buildings, along with the establishment of associated curtilages.

24. Weighing all factors up I have concluded that, in both spatial and visual terms, the development does not have a greater impact on the Green Belt's openness than is the case with the existing lawful use as a caravan park. As this is

seemingly not previously developed land policy EE17 of the Runnymede 2030 Local Plan (LP) cannot directly apply, but I am satisfied that the building does not materially conflict with the objectives of LP policies EE18 and EE19.

Flood Risk

25. The site's rear boundary is effectively part of the northern bank of the River Wey and it thereby falls within its floodplain. Accordingly, it would be subject to a high risk of flooding and lies within the High Risk Zones of 3, 3a and 3b. Flood Zone 3 is for areas with a greater than 1 in 100 chance of flooding annually. Building designs must consider potential flooding impacts and mitigation strategies, so as to ensure structures are resilient and adaptable to potential flood events.

26. At my site visit I noted that the building is raised off the ground with breeze blocks which are also sunk significantly into the ground. Also, as mentioned, although I have no knowledge of the findings of any flood risk assessments (FRA) carried out in the immediate area, I am mindful that, as mentioned, there are a number of caravans/mobile homes in within the immediate vicinity.

27. The Framework says that a site specific FRA should be provided for all development in Flood Zones 2 and 3; the latter being the most vulnerable. Such development would normally require the implementation of both the Exception Test and Sequential Test so as to demonstrate that the development would reduce the flood risk to the site, during its lifetime, and also the surrounding area. Consistent with this requirement LP policy EE13 says that development involving the provision of even one additional residential unit must not materially cause new or exacerbated flooding problems, either at the site itself or elsewhere.

28. Although the appellant, in his statutory declaration, said that the site flooded in both 2014 and 2019, I am not aware of any standard FRA having been undertaken and, given the importance of the issue and the building's habitable occupation, setting aside the fact that the building is already in situ, it would normally be essential to regularise the situation at the application stage rather than leave it to be addressed by way of a retrospectively worded planning condition as there would be the possibility that an acceptable resolution might not be reached, thereby leaving the development vulnerable.

29. Given the circumstances the development is in material conflict with the objectives and requirements of LP policy EE13.

Human Rights Act

30. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.

31. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.

32. I find there was a legitimate aim here in the Council's decision to issue the enforcement notice. In this instance the aim was the intention of protecting the openness of the Green Belt from inappropriate development therein. Irrespective of my findings, given the objectives of LP policies EE18 and EE19, consistent with relevant advice within the Framework, I am satisfied that the Council's decision to take formal enforcement action was necessary and proportionate and, in this policy context, it does not unduly compromise the right of respect for the appellants' private and family life.

Planning balance

33. Although I have found the building to be inappropriate development within the Green Belt I also find that it has had no significant impact on the openness of the Green Belt than is the case with the current lawful use of the land.

34. Nonetheless, this has to be balanced with the fact that the site is at risk of flooding. Indeed, the appellants have referred to two such events having occurred in the past ten years. Although I acknowledge that the building has been raised off the ground with breeze-blocks the DPA should have been properly prepared with an accompanying FRA. Even though it appears that the Council did not raise this matter it is the appellants' responsibility to address all issues and get their case in order.

35. Given the importance of providing measures to mitigate the possibilities of flood risk, this unresolved issue outweighs my findings as to the impact of the building itself within its contextual setting. Accordingly, I have concluded that the very special circumstances necessary to override the presumption against inappropriate development within the Green Belt have not been demonstrated in the appellants' case as put forward.

36. The Council has raised concerns that any planning permission granted to retain the building would have implications for the Council resisting similar proposals within the locality in the future. However, I disagree with this approach insofar as each planning proposal should be determined with regard, not only to its planning merits and/or impacts, but also the particular individual issues involved.

37. I have had regard to the appeal decision letters provided by the Council. However, these are site sensitive, taking into account the particular circumstances in each instance. Accordingly, these decisions have had no bearing on my decision.

Conclusion on the DPA

38. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, but with a variation (see later) and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

39. An appeal on ground (f) is that the requirements of the enforcement notice go beyond what is necessary to remedy the breach which is clearly, in this instance, the reason for issuing the notice.

40. It was put to the Inquiry that the building in situ could be modified so as to satisfy the definition of a caravan. However, this is not so straightforward as

the 'size test' is not the only criteria to be factored in. The unit must also satisfy both the 'construction test' and the 'mobility test'. Regarding the former it is a requirement that the act of joining together the two sections should be the *final* act of assembly. Also, the appellants confirmed at the Inquiry that the unit was not capable of being moved from one place to another in its assembled state.

41. Accordingly, the said building cannot be adapted so as to legally constitute a caravan. Alternatively, should it be intended to reduce the building's floorspace there are no specific proposals before me to illustrate exactly what modifications are proposed.

42. In the circumstances, I must conclude that the stated requirement to remove the dwelling is proportionate and, accordingly, the appeal does not succeed.

The appeal on ground (g)

43. An appeal on ground (g) is that the time period specified for compliance with the enforcement notice's requirements is unreasonably short. Here, the stipulated period is six months, but the appellants are requesting that this be extended to at least twelve months. Given my findings as to the planning merits and impacts arising from the development, it would be open to the appellants to commission specialist consultants to carry out a FRA so as to assess whether suitable mitigation measures can be practicably employed to render the development acceptable in terms of flood risk.

44. Having regard to the above, should the appellants decide to go down this route, a retrospective planning application would, of course, be necessary in the first instance in an attempt to secure a planning permission. That must remain a matter between both main parties and would likely involve negotiation. In such circumstances, taking account of disruption to the occupiers and, should the situation arise, allowing for the determination of any planning application, I shall extend the compliance period to nine months from the date of this decision.

45. The appeal, therefore, succeeds to this extent.

Overall Conclusion

46. The appeal is dismissed and the enforcement notice is upheld with a variation.

Timothy C King

INSPECTOR