The Planning Inspectorate

Appeal Decisions

Site visit made on 28 September 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2020

Appeal A Ref: APP/B5480/C/19/3232633
Appeal B Ref: APP/B5480/C/19/3232634
Harefield House, The Chase, Upminster RM14 3YB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Mark Wright and Appeal B by Mrs Leah Wright against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/509/18, was issued on 6 June 2019.
- The breach of planning control as alleged in the notice is
  (i) Without the benefit of planning permission, the change of use of the section of the meadow land shown in blue on the attached map on the western boundary of the property to residential curtilage
  (ii) Without the benefit of planning permission, the erection of an outbuilding in the part of the meadow land shown in blue on the attached map on the western boundary of the property to residential use.
- The requirements of the notice are;
  (i) Cease the residential use of the land shown in blue in the attached plan; and
  (ii) Remove/demolish the outbuilding within the area shown in blue on the attached plan;
  (iii) Remove all garden furniture, sports equipment and all other items from the area shown in blue on the attached plan;
  (iv) Remove the wooden fences on the western and northern boundaries; and
  (v) Remove from the land all debris, rubble and other materials accumulated as a result of taking the above steps.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)[a], [c] 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.
- Appeal B is an identical appeal except there is no ground (a).

Decision

1. It is directed that the enforcement notice is corrected by the deletion of the wording of the alleged breaches (i) and (ii) in section 3 of the notice and their replacement with:

   - '3 (i) Without the benefit of planning permission, the material change of use of the land shown in blue on the attached plan on the western area of the Land to use for residential purposes'; and

   - '3 (ii) Without the benefit of planning permission, the erection of an outbuilding, edged dark blue, in the part of the land shown in blue on the attached plan on the western area of the Land.'

2. The appeals on ground (d) are allowed in so far as they relate to the outbuilding edged dark blue, in the part of the land shown in blue on the attached plan on the western area of the Land, and it is directed that the notice is varied by the deletion of the alleged breach (ii) in section 3 of the notice (as corrected) and the deletion of requirement (ii) in section 5 of the notice.

3. It is also directed that the enforcement notice is varied by the deletion of the wording of requirement (iv) in section 5 and its replacement with 'Remove the wooden fences along the northern side of the land shown in blue on the attached plan on the western area of the Land; and' and renumbering the requirement (iii).

4. It is directed that the enforcement notice is varied to renumber requirement 5 (iii) as 5 (ii) and 5 (v) as 5 (iv).

5. The appeals are dismissed and the enforcement notice is upheld, as corrected and varied insofar as it relates to the land shown in blue on the attached plan and in Appeal A (APP/B5480/C/19/3232633) planning permission is refused in respect of the material change of use of the land to use for residential purposes at Harefield House, The Chase, Upminster RM14 3YB on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

6. The appellants have not submitted their appeals on the basis of ground (f), which is that the steps required by the notice to be taken are excessive. However, they have addressed this ground in their submissions in relation to the removal of fences on the western and northern boundaries, and I have considered it below.

The Notice

7. Breach 3 (i) refers to change of use to residential curtilage, however curtilage defines an area of land in relation to a building and not a use of land. Therefore, I shall correct the notice to refer to 'change of use…for residential purposes'. It is clear from the submission that the parties are aware what the breaches are and neither the Council nor the appellant would be prejudiced by my determining the appeals with reference to breach 3 (i) as corrected.

8. The appellants say that the land shown blue on the plan attached to the notice (the blue land) and referred to in the breach 3 (i) has never been used as meadow land. Consequently, they consider that the actual change of use which has occurred is from use class B8 (storage and distribution). The Council disputes this. However, it is not necessary for the notice to state what the material change of use is from and I can correct the notice by removing the reference to the 'section of the meadow', to address this point in dispute. For consistency I shall also remove the word 'meadow' from breach 3 (ii).

9. Breach 3 (ii) also includes the phrase 'to residential use' which is superfluous as this breach clearly relates to the erection of an outbuilding not to any change of use to residential use.

10. The position of the outbuilding referred to in breach 3 (ii) is edged dark blue on the site plan but is not identified in this way in the wording of the breach. I will therefore correct breach 3 (ii) to identify the outbuilding as edged dark blue. I

will also correct the text of the breach to replace the words 'map' with 'plan' as this is an accurate description of the document which is attached to the notice.

11. Following my corrections, the breaches of planning permission which are alleged in the notice are:

    (i) Without the benefit of planning permission, the material change of use of the land shown in blue on the attached plan on the western area of the Land to use for residential purposes.

    (ii) Without the benefit of planning permission, the erection of an outbuilding, edged dark blue, in the part of the land shown in blue on the attached plan on the western area of the Land.

Ground (c) (Appeals A and B)

12. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.

13. The appellants argue that the fences which must be removed under requirement (iv) of section 5 of the notice benefit from permitted development rights under Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order (the GDPO). They also consider that these rights have not been removed, in relation to fences, by conditions which were imposed on the planning permission for Harefield House (Council Ref. P1401.11).

14. An appeal under ground (c) relates to the allegation as set out in the notice, which in this case does not refer to the erection of the fences. Therefore, the status of the fence is not relevant and as the appellants have not submitted any evidence that the matters alleged i.e. the material change of use for residential purposes and erection of an outbuilding in the notice do not constitute a breach of planning control, the appeal fails under ground (c).

15. S173(5) of the Planning Act 1990 (the Act) gives the power to require alteration or removal of works for the purpose of remedying the breach and this power extends to works which on their own might constitute permitted development. In this case, even if the fences had been referred to in the allegation and were found to be permitted development, if it can be shown that they have facilitated the change of use, then they can be included as requirements of the notice. I have dealt with this matter under ground (f) below.

16. For the reasons set out above the appeals under ground (c) fail.

Ground (d) (Appeals A and B)

17. The appellants submissions on ground (d) relate to the erection of the outbuilding only.

18. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.

19. This ground of appeal assumes that at some stage there has been a breach of planning control, but that it is immune from enforcement, having subsisted for a four-year period in the case of operational development such as the erection of an outbuilding.

20. The Council refers to an enforcement notice which was served on 24 August 2018 (the 2018 notice) and considers that on the basis of that notice the four year period runs from 24 August 2014. Whilst the Council says that the 2018 notice related to similar breaches of various control, I do not have a copy of this notice and cannot be sure that it included the allegation relating to the outbuilding. Also, the status of the 2018 notice is not clear. Consequently, I have taken the relevant date to be 6 June 2015 which is 4 years before the service of the enforcement notice which is the subject of this appeal.

21. The appellants have provided a statutory declaration from Mr Mark Wright, who is one of the appellants. Mr Wright says that the outbuilding was in place prior to his purchase of Harefield House on 19 September 2014. They have also submitted sales particulars for the house which are undated but which it is reasonable to assume were published before the house was purchased by the appellants. The written particulars do not refer specifically to the outbuilding but there is a structure behind the house on photographs in the document which appears to be in the same position as the outbuilding to which the notice relates. The appellants have also submitted plans dated 23 June 2014, 29 July 2014 and 14 August 2014 which were connected to their purchase of the house and which all show the outbuilding in situ.

22. On the other hand, the Council refers to the dates of the Google streetview extract provided by the appellant from August 2012 and the sales particulars from 2014 as failing to demonstrate when the outbuilding was substantially complete. In itself this information does not contradict the other evidence provided by the appellants or provide any certainty that the outbuilding had not been erected on 6 June 2015 or in fact the earlier date of 24 August 2014 which the Council has referred to.

23. Taking all of this evidence together I find that the appellants have demonstrated that the outbuilding has been in place for four years. There is no evidence before me to establish that the outbuilding was not complete on or before 6 June 2015. Therefore, on the balance of probabilities I find the case presented by the appellants shows that the outbuilding has been in situ for more than four years prior to the date when the notice was issued and, on this basis, it is immune from enforcement action.

24. For the reasons set out above the appeals under ground (d) succeed, in so far as they relate to breach 3 (ii) being the erection of an outbuilding.

25. In the light of my findings I will vary the notice by the deletion of the breach of planning control 3 (ii) and the associated requirement 5 (ii).

Ground (a) and the Deemed Planning Application (DPA) (Appeal A only)

26. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

27. On the basis that I have corrected the notice, as a result of my reasoning on ground (d), the outbuilding no longer forms part of the allegation of the breaches of planning control. Therefore, ground (a) and the DPA fall to be considered on the basis of the change of use of the blue land only. Consequently, the main issues are:

    - Whether or not the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies.
    - The effect of the development on Cranham Conservation Area.
    - If the development is inappropriate, 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 required to justify the proposal in accordance with the Framework.

Reasons

Whether Inappropriate Development/effect on openness

28. There is no dispute between the parties that the site lies within the Green Belt. Policy 7.16 of the London Plan protects the Green Belt from inappropriate development and Policy DC45 of the Core Strategy and Development Control Policies Development Plan Document (2008) (the Core Strategy and DC Policies DPD) relates to appropriate development in the Green Belt. Policy DC45 sets out that planning permission for development in the Green Belt will only be granted for a limited range of purposes.

29. Policy DC45 is not consistent with the Framework which identifies a material change of the use of land as not inappropriate in the Green Belt provided that it preserves openness and does not conflict with the purposes of the Green Belt. Consequently, I have accorded Policy DC45 limited weight given this inconsistency.

30. The appellant suggests that the use of the blue land should be regarded as a use of land for outdoor sport and recreation. However, given the lack of any evidence to demonstrate any use other than by the appellant and his family and friends, I have regarded the use as a domestic garden i.e. for residential purposes.

31. The blue land is currently enclosed and forms part of the garden serving Harefield House. To the north is another house which has a rear garden of the same depth as Harefield House. To the south are the grounds of a school and to the west an open area with naturally occurring native plants.

32. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential

characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt is the absence of development and has a spatial as well as a visual aspect.

33. The blue land is currently laid to mown grass and surrounded by hedging and it has a domestic appearance. It is not separated from the rest of the garden area by any form of fence and, although the goal posts which were on the land have been moved, the occupants of the house could bring outdoor furniture, play equipment or washing lines onto the land or landscape it with ornamental planting. Such actions would further embed its character as managed garden space as opposed to a natural area in stark contrast to the green space to the west.

34. The blue land is not visible from The Chase but there are views of the school playing fields from it and it is reasonable to assume that it is visible from that direction. The open area to the west does not appear to be publicly accessible, although the blue land is visible from it and also from the garden of the adjacent house, Magnolia House.

35. The erection of the outbuilding has led to a loss of Green Belt in spatial terms however this development is immune from enforcement action. Given that there are no other structures on the blue land the change of use has not resulted in any further loss of Green Belt in spatial terms. However, the development has led to a loss of openness in visual terms, through the domestication of the blue land. This would cause harm to and fail to preserve the openness of the Green Belt.

36. Setting the extent of the blue land, which appears to double the size of an already large rear garden, against the limited nature of views of it from the wider area, the harm to the Green Belt would be moderate.

37. In order not to constitute inappropriate development in the Green Belt the development would have to both preserve openness and not conflict with any of the five purposes of the Green Belt which are set out in the Framework. I have concluded that the change of use would not preserve the openness of the Green Belt. Overall, the development would not assist with safeguarding the countryside from encroachment which is one of the five purposes of including land within the Green Belt

38. I conclude that the development is inappropriate development in the Green Belt having regard to the Framework and its effects on the openness of the Green Belt. The development is therefore contrary to Policy 7.16 of the London Plan and does not comply with Policy DC45 of the Core Strategy and DC Policies DPD, to which I have attached limited weight.

Cranham Conservation Area (the CA)

39. There is no dispute between the parties that the blue land lies within the CA. Policies DC61 and DC68 of the Core Strategy and DC Policies DPD require new development to maintain, enhance or improve the character and appearance of the local area in general and to preserve or enhance the character and appearance of Conservation Areas in particular. Both of these policies are broadly in accordance with the Framework.

40. The appellant highlights that the Cranham CA Character Appraisal and Management Proposals (the CAMP) states that one of the reasons why the CA

was first designated was as a result of development pressure in The Chase. He also refers to the CAMP description of the narrow and heavily treed approach along The Chase providing a dramatic contrast to the views which open up at its southern end. The Council has not provided any evidence to demonstrate that the change of use would have an adverse impact on the approach along The Chase or any other elements of the CA which are referred to in the CAMP.

41. In terms of the impact on the CA, the blue land is screened from The Chase by Harefield House and as such, and in use as a garden, it does not contribute to the character and appearance of the lane. The CAMP emphasises the importance of a group of historic buildings which are not visible from the site and the residential use does not affect the setting of those buildings.

42. In summary the change of use does not have a harmful effect on the CA. As such it is not necessary for me to consider the guidance provided by Paragraph 196 of the Framework in relation to the balance of harm to a heritage asset against public benefits.

43. I conclude that the material change of use to for residential purposes does not have a harmful effect on the character and appearance of Cranham CA. The development is therefore in accordance with Policies DC61 and DC68 of the Core Strategy and DC Policies DPD.

Other Considerations

44. The appellant has suggested that a condition could be imposed to remove permitted development rights from the blue land, which would restrict any additional built development. However, such a condition would not prevent the blue land having a domestic appearance derived from the mown grass and features such as goal posts and garden furniture.

45. On the basis of my consideration of the submissions and my site visit it appears to me that there may be an obvious alternative to the requirement to cease the use of all of the blue land. In these circumstances it is necessary for me to explore whether the alternative would overcome the planning difficulties at less cost and disruption than full compliance with the notice.

46. I have varied the notice to omit breach 3 (ii) relating to the outbuilding and it is not required to be removed in order to comply with the notice. However, if I were to dismiss the appeal under ground (a) and refuse to grant the DPA this would result in the cessation of the residential use of the blue land and the outbuilding which falls within it. Consequently, the outbuilding could not be used for a residential purpose and it would be a building without a use until such time as planning permission was granted for an appropriate use.

47. The building is located such that its front elevation aligns closely with the adjacent land which the Council identifies as forming the approved curtilage to Harefield House (the approved curtilage). It does not extend across the full width of the plot and in combination with its limited depth the outbuilding occupies a relatively small part of the blue land.

48. The alternative to dismissing the appeal and refusing the DPA would be to allow the appeal for that part of the blue land which is occupied by the outbuilding and grant planning permission for change of use for residential purposes for that part only. This would resolve the issue of the future use of the building saving time and expense on the part of the appellant and the Council.

49. The outcome of the alternative approach would be to establish a building within the Green Belt which would have a residential use. Whilst the outbuilding appears to be used as recreational space currently it is of a size and has facilities such that it could be easily converted into self-contained living accommodation. This is a form of development which is regarded as inappropriate in the Green Belt.

50. The Council has not submitted any planning conditions which it wishes to see imposed if the DPA is allowed. Whilst the appellant has suggested that a relevantly worded condition could be imposed restricting the use of the outbuilding, he has not provided any details of how such a condition could be phrased. In the absence of a condition which has been shown to meet the tests of being precise and enforceable I cannot be assured that enabling the alternative approach would not result in harm to the Green Belt.

Green Belt Balance

51. Paragraph 143 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on at paragraph 144 to indicate that substantial weight should be given to any harm to the Green Belt and 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 considerations.

52. I have found harm to the Green Belt by way of inappropriateness. Although I have not found harm in terms of the impact of the development on the CA, this has a neutral effect on the balance. There are no arguments before me in support of the proposal, which clearly outweigh the harm that I have identified in relation to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do not exist. Therefore, the proposed development conflicts with the Green Belt protection aims of the Framework.

Conclusion in respect of ground (a) and the DPA

53. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f) (Appeals A and B)

54. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

55. The appellant argues that the notice should not require the removal of the fencing on the western and northern boundaries.

56. As I explained above S173(5) of the Planning Act 1990 (the Act) gives the power to require alteration or removal of works for the purpose of remedying the breach and this power extends to works which on their own might constitute permitted development.

57. Taking the notice on its face it requires the removal of fencing between Harefield House and Magnolia House. Notwithstanding the effect of Condition 8

of planning permission ref. P1401.11 which relates to means of enclosure in the garden areas, the compliance or otherwise with which is not before me, it seems to me to be reasonable for fencing to be retained between the two houses along the boundary of the approved curtilage. This can be addressed by a variation to the notice to refer to the removal of the fences on the sides of the blue land only.

58. Turning to the northern and western sides of the blue land. The appellants argue that fencing has been installed for security reasons. They say that regardless of the use of the blue land it is in their ownership and needs to be contained.

59. The western fence is embedded in a maturing hedge. If it were to be removed there would be greater potential for access via the open area beyond which would be a safety and security risk. Similarly, the northern fence is within a hedge and its removal would make access between Harefield House and Magnolia House easier. However, I do not consider that the removal of the northern fence would present the same risks to safety and security as the western fence.

60. The Council does not provide a view as to whether or not the fences facilitate the change of use of the blue land. Their argument is that the fences require planning permission as means of enclosure, but they are not included in the alleged breach of planning control. It is therefore reasonable to assume that the Council consider the fences to facilitate the change of use. In the sense that fences secure the blue land and make it possible for it to be used for residential purposes without it being accessed from the open area or the neighbours garden, they facilitate the change of use.

61. For these reasons it is appropriate for the removal of the fences to be one of the requirements. However, the safety and security of the appellants is a relevant consideration and to that end I shall vary requirement 5 (iv) to relate to the removal of the fence on the northern side of the blue land only. This will allow the retention of the fence on the western side between the site and the open area beyond.

62. The appellants also raise concerns about the fencing along the edge of the school playing fields. However, this fence is not affected by the notice.

63. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice to delete requirement 5 (iv) and to replace it with wording relating to the removal of the fence on the northern side of the blue land only prior to upholding it. The appeals on ground (f) succeed to that extent.

Conclusions

64. For the reasons given above I conclude that the appeals should succeed on ground (d) in so far as they relate to the outbuilding and ground (f) in relation to the removal of the fence on the western side of the blue land. I shall uphold the notice with corrections and 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.

Sarah Dyer Inspector