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## Appeal Decisions

Site visit made on 6 December 2022

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 December 2022**

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**Appeal A Ref: APP/B5480/C/21/3281377**

**Appeal A Ref: APP/B5480/C/21/3281378**

**Land to the North of the Southend Arterial Road, situated to the East of BP Connect, Southend Arterial Road, Hornchurch RM11 3UJ**

- The appeal is 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 Henry Albert Tebbutt (Appeal A) and Mrs Jacqueline Hazel Tebbutt (Appeal B) against an enforcement notice issued by the Council of the London Borough of Havering.
  - The enforcement notice was issued on 27 July 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the laying of a hard surface (for the creation of a road).
  - The requirements of the notice are:
    - (i) Remove all of the hard surfacing and all associated development, including any hardcore and / or any other substrate and all other imported material within the hatched area on the attached plan; AND
    - (ii) Remove all other debris, rubbish or other materials accumulated as a result of taking step (i) above; AND
    - (iii) Reinststate the land as to how it was prior to the development occurring, including levelling out of the excavated area with soil of a similar type and condition to that of the non-excavated areas.
  - The period for compliance with the requirements is 2 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) 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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### Decisions

1. It is directed that the enforcement notices be:
  - varied by deleting the words "2 months" within section 6 (Time for Compliance) and its replacement with "4 months".
2. Subject to these variations, the appeals are dismissed, and the enforcement notices are upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

### Procedural Matters

3. During the course of this appeal, Havering Core Strategy and Development Control Policies Development Plan Document, 2008 (CS), and policies contained within it, has been replaced with the Havering Local Plan 2016 – 2031, which was adopted in November 2021 (Local Plan). This must now be

given full weight in the decision making process. Both parties have been given the opportunity to comment on the new Local Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded CS.

## **Appeal A: Ground (a) Appeal and the Deemed Planning Application**

### **Main Issues**

4. The main issues are:

- whether the development amounts to inappropriate development in the Green Belt;
- the effect of the development on the safe access and operation of Paige's Wood; and existing uses within the Green Belt and Thames Chase Community Forest Community Forest
- the effect of the development on biodiversity within the Thames Chase Community Forest and the Ingreborne Valley Metropolitan Site of Importance for Nature Conservation (SNIC);
- if the development is inappropriate, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development.

### **Reasons**

#### *Background*

5. The appeal site is located in the Metropolitan Green Belt. Access is obtained from either the BP connect garage, adjacent to the appeal site or via the pedestrian access on the A127 Southend Arterial Road.
6. Planning Permission was granted to replace the pre-existing White Bungalow with a new single storey dwelling<sup>1</sup>. Although no detailed drawings of this permission have been provided the appellant states that planning permission has since commenced, which includes vehicular access and egress direct from and to the A127 Southend Arterial Road. The appellant state that it is in this context that the laying of a hard surface, for the creation of a road was initiated, with the aim of creating an alternative, safer access to the White Bungalow, using their existing Right of Way from the BP Connect, rather than the approved access direct from the A127.

#### *Whether inappropriate development*

7. National policy on Green Belt development is set out in Part 13 of the National Planning Policy Framework, 2021 (the Framework). Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Of particular relevance to this appeal is Paragraph 150 which states that certain other forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include, at criterion b) of Paragraph 150, engineering operations.

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<sup>1</sup> Council ref: P1474.13

Reference has also been made to Policy G2 of the London Plan, 2021 (London Plan), which is consistent with the Framework. Accordingly, I have assessed these appeals based upon the Green Belt policies contained in the London Plan, and the Framework.

8. The Framework sets out that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it, and that one of the purposes of designating Green Belt is to assist in safeguarding the countryside from encroachment. The certain forms of development that are potentially not inappropriate include engineering operations. The construction of a hard surface (for the creation of a road) involves engineering operations. Therefore, I must assess the developments effect on openness and if the development conflicts with the purposes of the land being designated as Green Belt before concluding whether or not the development is inappropriate.
9. The laying of a hard surface to provide a road for the new dwelling covers a sizeable area. Notwithstanding the presence of relatively dense vegetation and scrubland within the appeal site, the hard-surface road is visible from public vantage points along the Thames Chase Community Forest. It therefore has an urbanising and encroaching effect, particularly in the context of the existing largely undeveloped land with Pages Wood and the Thames Chase Community Forest. Notwithstanding the existing network of pathways within the Thames Chase Community Forest, it results in a loss of openness. Furthermore, a consequence of constructing a hard-surfaced area specifically intended for vehicular access is the likely regular presence of vehicles using the access road and associated people, which exacerbates the negative effects of the development and the loss of openness identified.
10. For the above reasons, the development encroaches into the countryside and is inappropriate development in the Green Belt and, in this regard, it conflicts with Policy G2 of the London Plan and the Framework and in so far as it states that the Green Belt should be protected from inappropriate development, and that inappropriate development is, by definition, harmful to the Green Belt.

*Safe access and operation of Paige's Wood and existing uses within the Green Belt and Thames Chase Community Forest*

11. The supporting text for Policy G4 (Open Space) of the London Plan highlights that "all types of open space, regardless of their function, are valuable in their ability to connect Londoners to open spaces at the neighbourhood level. Connectivity across the network of open spaces is particularly important as this provides opportunities for walking and cycling."
12. I observed during my site visit that this section of the Thames Chase currently provides a pathway free from vehicular traffic, and thus providing a clear pathway for recreational users of the area which include both walkers and cyclists, ideal for people and families exploring the woodlands of Pages Woods. However, the new road providing vehicular access for the new dwelling would cross a pathway used by pedestrians and cyclist in the Thames Chase, thereby posing a significant risk to public safety. Furthermore, no clear evidence has been submitted by the appellant to demonstrate the introduction of a new road crossing the existing pathway would not harm pedestrian and cycle safety in the Thames Chase.

13. In the absence of any compelling evidence to the contrary, I conclude that the development harms the safe access and operation of Pages Wood, which in turn also harms the existing recreational uses, including walking and cycling, within the Thames Chase Community Forest. In this respect the development conflicts with Policies 12, 18, 23 and 29 of the Local Plan and Policies GG3, D8 and G4 of the London Plan. Amongst other things these seek to improve Londoner's health and require that development proposals create areas of publicly accessible open space, promote well designed and safe places, improve the quality of and access to, existing open space, sports, and recreation facilities, that enable walking and cycling, and optimise the benefits of green infrastructure to the community.

*Biodiversity within the Ingreborne Valley Metropolitan Site of Importance for Nature Conservation (SNIC) and Thames Chase Community Forest*

14. The site is located within the Ingreborne Valley Metropolitan Site of Importance for Nature Conservation (SNIC), and the Thames Chase Community Forest.
15. The justification for Policy G6 (Biodiversity and access to nature) of the London Plan highlights the significance of these sites and states that 'Sites of Metropolitan Importance' are "*strategically important conservation sites for London.*" In addition, the justification for Policy G7 (Trees and Woodlands) of the London Plan states that "*Trees and woodlands play an important role within the urban environment. They help to trap air pollutants, add to amenity, provide shading, absorb rainwater, and filter noise. They also provide extensive areas of habitat for wildlife, especially mature trees. The urban forest is an important element of London's green infrastructure and comprises all the trees in the urban realm, in both public and private spaces, along linear routes and waterways, and in amenity areas.*"
16. The appellant considers that the Council's concerns regarding the adverse effect of the introduction of hard surfacing on biodiversity (both Flora and Fauna) are anecdotal and not based on any professional expert evidence. However, neither has the appellant provided any sound professional evidence to demonstrate that biodiversity has not been harmed as a result of the development. It is also the responsibility of the appellant, as developer, to submit such evidence in support of their development proposal.
17. During the site visit I also observed that large areas near the entrance of Pages Wood had been excavated to facilitate the new hard surfacing and access road. These works included vegetation being cleared, cut roots exposed in the ground from these excavated areas and earth dumped in mounds at the appeal site. Notwithstanding that the site is located close to the A127 and at the edge of the Thames Chase Community Forest, there is no clear evidence before me to demonstrate that these excavation works, the clearing of vegetation and dumping of earth within Pages Woods has not resulted in any adverse effect on Flora and Fauna within Thames Chase Community Forest and the Ingreborne Valley Metropolitan Site of Importance for Nature Conservation (SNIC).
18. In the absence of any sound ecological evidence, I conclude that the development results in unacceptable harm to the biodiversity within the Thames Chase Community Forest and the Ingreborne Valley Metropolitan Site of Importance for Nature Conservation (SNIC). In this respect, the development conflicts with Policy 30 of the Local Plan which states that the Council will protect and enhance the borough's natural environment and seek

to increase the quantity and quality of biodiversity in Havering by: i. Ensuring developers demonstrate that the impact of proposals on protected sites and species have been fully assessed when development has the potential to impact on such sites or species.

19. The development also conflicts with Policies GG3, G4, G6 and G7 of the London Plan which amongst other things seeks improved quality of green spaces, that development proposals should not result in the loss of protected open space, should manage impacts on biodiversity, and should be informed by the best available ecological information and addressed from the start of the development process, and that London's urban forest and woodlands should be protected and maintained.
20. Finally, the development fails to accord with the Framework which states that decisions should contribute to and enhance the natural and local environment by.... d) minimising impacts on and providing net gains for biodiversity.

*Other considerations*

21. In support of the current development, the appellant states that the route of the road follows an existing well-worn track. Whilst I acknowledge that the appellants have a right of access of over the appeal site, the current development introduces new areas of hard surfacing over the appeal site, where none previously existed across Pages Woods. I therefore give limited weight to this matter.
22. The appellant also states that whilst the approved access for the White Bungalow was found to be acceptable by the Council, the current appeal development is superior in respects of a Highways safety. However, no clear evidence has been submitted to demonstrate the introduction of a new road crossing the existing pathway in the Thames Chase Community Forest, used by pedestrians and cyclists in the Thames Chase would not harm pedestrian and cycle safety. Furthermore, the evidence indicates that the White Bungalow benefits from an extant permission for new access and no substantive evidence has been submitted to demonstrate that the existing access conditions is unsafe. I therefore give no weight to the highway safety benefits advanced by the appellant.
23. The appellant states that they are also amenable to allowing the Forestry Commission to use the access road for maintenance and for other purposes, and that this is in accordance with national and local planning policies in terms of biodiversity and improving the quality of and access to Community Forests and the Green Belt. However, there is no evidence to suggest that the Forestry Commission are in support of the current development for access. Furthermore, I have already found above that the development harms the safe access, operation, and biodiversity within the Thames Chase Community Forest and the Ingreborne Valley Metropolitan Site of Importance for Nature Conservation (SNIC). I therefore attach no weight to this purported benefit.
24. The appellant further states that given the existence of other paths in the Thames Chase Community Forest, the appearance of the hard surfacing would be acceptable. However, the visual compatibility of the development in its wider context is of neutral consequence in the overall planning balance.

### **Green Belt Balance and Conclusion on Ground (a) Appeal and the Deemed Planning Application**

25. I have found that the development amounts to inappropriate development and loss of openness in the Green Belt. These are matters to which I afford substantial weight. In addition, I have found that the development also harms the safe access and operation of Pages Wood, which in turn harms the existing recreational uses within the Thames Chase Community Forest. The development also results in unacceptable harm to the biodiversity within the Thames Chase Community Forest and the Ingreborne Valley Metropolitan Site of Importance for Nature Conservation (SNIC). The adverse impacts need to be weighed against the other considerations that have been identified, noting that there are no significant benefits.
26. In conclusion, the substantial weight to be given to Green Belt harm, and the other identified harms arising from the development, is not clearly outweighed by the other identified considerations. Consequently, the very special circumstances necessary to justify the development do not exist.
27. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

### **Appeals A and B: The appeals on Ground (g)**

28. This ground of appeal is that the time given to comply with the notice is too short. The appellants ask that the time for compliance is extended from two to six months to carry out the remedial works. In my opinion, 4 months would strike a more reasonable and proportionate balance to carry out the necessary works.
29. To this extent, the ground (g) appeals succeed, and I will vary the notices accordingly.

### **Conclusions**

30. **Appeals A and B:** For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*R. Satheesan*

INSPECTOR