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# Appeal Decision

Site visit made on 28 March 2023

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18<sup>TH</sup> APRIL 2023**

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**Appeal Ref: APP/B5480/C/22/3301752**

**Land known as Meadow Farm, Eastern Avenue East, Romford RM3 7NR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Irene Booker against an enforcement notice issued by the Council of the London Borough of Havering.
  - The notice was issued on 27 May 2022.
  - The breach of planning control as alleged in the notice is without planning permission:
    - i. Within the last 10 years, the unauthorised material change of uses (*sic*) of the plot shown hatched in black on the site plan from use of (*sic*) undeveloped land to use for the importation and storage of building materials and rubble.
    - ii. Within the last 4 years, unauthorised operational development of [the] land in the form of erection of boundary fencing and gates over 2 m high.
    - iii. Within the last 4 years, unauthorised operational development in [the] form of hard surfacing.
    - iv. Within the last 4 years, unauthorised operational development in [the] form of construction of access road running from north to south on the western side of the site shown in grey outside the area shown hatched in black.
  - The requirements of the notice are:
    - i. Cease the use of the land shown hatched in black for the purposes of importation and storage of building materials and rubble; and ii. Remove boundary fencing and gates from the area shown hatched in black; and iii. Remove from the land all imported building materials, rubble, debris and waste materials from the area shown hatched in black associated with the carrying out of the above steps; and iv. Remove the access road made using concrete shown in grey running north to south on west of [the] site shown on the site plan; and v. Remove from the site all building materials and debris associated with carrying out the above steps.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) & (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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## Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning Permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Ground (a) appeal

### Main Issues

2. The appeal site is in the Metropolitan Green Belt. The appellant confirmed that they were not seeking planning permission for the storage use, or for the hard surfacing or access road attacked by the enforcement notice. This means that the ground (a) appeal is confined to the fencing and gates. It also means that a

number of the Development Plan policies referred to in the notice are of limited relevance, having regard to the narrow scope of the deemed planning application. Therefore, the main issues in the appeal are:

- Whether the fencing and gates constitute inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and the Development Plan.
- The effect on the openness and purposes of the Green Belt.
- The effect on the character and appearance of the surrounding area.
- Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify granting permission for the fencing and gates.

### **Reasons**

3. The appeal site is a rectangular parcel of land adjacent to the A12 dual carriageway. This land, which is of substantial size and covered by a rough hard surface and rubble, forms part of a larger area including a former farmyard in residential and commercial uses, together with rough grassland.
4. The notice attacks fencing formed from solid corrugated metal sheet panels around 2.7 m in height, supported on a timber frame. The fencing encloses the land from the A12 as well as on two sides. Gates of similar materials and height are set within the fencing. The gates open onto the access road in the notice, which leads from the A12 to the former farmyard as well as adjacent land also in commercial use.

#### *Whether inappropriate development*

5. Paragraph 149 of the Framework advises that in the Green Belt, apart from in limited exceptions the construction of new buildings should be regarded as inappropriate development. Fences and gates fall within the statutory definition of a building. The exceptions listed in paragraph 149 do not include fences and gates. Consequently, erection of the fencing and gates constitutes inappropriate development in the Green Belt. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt. Policy G2 of the London Plan states that the Green Belt should be protected from inappropriate development; proposals that would harm the Green Belt should be refused except where very special circumstances exist.

#### *Effect on Green Belt openness and purposes*

6. The fencing and gates were preceded by low timber post and rail fencing with maturing planting behind. Erecting significantly taller and solid, manufactured features in the form of the fencing and gates has led to the land being enclosed by, or adjacent to, more substantial built forms. Therefore, erecting the fencing and gates has eroded openness, albeit to a modest degree, from a spatial perspective.
7. The Government's Planning Practice Guidance, reflecting relevant case law<sup>1</sup>, advises that openness can have a visual as well as a spatial aspect. However,

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<sup>1</sup> *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466.

an absence of visual intrusion does not in itself equate to there being no resulting impact on the openness of the Green Belt. Moreover, notwithstanding the presence of commercial uses nearby, the extensive tracts of adjoining open land and dense maturing planting edging roadside verges give the environs of the site a semi-rural feel. Other boundary enclosures in the locality are generally of modest height with slender profiles and muted colouring, providing them with a limited visual presence. There are clear views available of the fencing and gates for some distance along the A12 in both directions. Seen individually and as a whole, the fencing and gates are a hard-edged, uncompromising urban feature, contrasting unfavourably with roadside planting and other boundary treatments and eroding the perception of openness in the locality.

8. The appellant argued the existence of a 'fallback' position in respect of erecting solid enclosures up to 1 m high adjacent to the A12 and up to 2 m high elsewhere, given the planning permission in the GPDO<sup>2</sup> at Article 3, Schedule 2, Part 2, Class A. The fencing and gates are likely to need replacing by some form of boundary treatment. Relevant case law confirms that in terms of whether there is a real prospect of the fallback position being implemented the basic principle is that the prospect does not have to be probable or likely: a possibility will suffice<sup>3</sup>. Such enclosures would however be significantly lower compared to the fencing and gates, with a corresponding reduced visual presence. There would be an appreciably greater sense of openness in visual terms compared to the existing situation. As a result, the fallback position would not have an effect that is similar or worse than that of the fencing and gates.
9. Furthermore, to be realistic the fallback position has to be more than a merely theoretical prospect. The appellant stated that the fencing and gates are intended to prevent fly tipping and trespassing as well as illegal encampments. As implementing the permission granted by the GPDO to its full extent would probably be insufficient to achieve that aim, solid enclosures are unlikely to serve a practical purpose. Solid enclosures are also likely to involve a considerable financial outlay on the part of the appellant, both in terms of their erection and subsequent maintenance, whilst the use to which the site can lawfully be put is limited. Open land in use for purposes similar to the lawful use of the site is rarely enclosed by tall solid barriers. Low post and rail fencing, akin to that erected at the edges of open land in the vicinity, would perform a similar function to any solid enclosures, probably at much less overall expense. Therefore, whilst the permission in the GPDO could be implemented in theory, to my mind there is not a realistic prospect of the appellant doing so in any event.
10. Consequently, the fencing and gates have had an adverse effect on openness. At paragraph 137, the Framework advises that openness is one of the essential characteristics of the Green Belt. In addition, due to the visual qualities of the fencing and gates as described above there has been encroachment into the countryside, in conflict with one of the purposes of including land within the Green Belt at paragraph 138 of the Framework. I attach substantial weight to the totality of the harm to the Green Belt, in line with the Framework at paragraph 148.

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<sup>2</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

<sup>3</sup> *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314.

### *Character and appearance*

11. The density of the roadside planting gives the environs of the site a sylvan feel. Together with the adjacent tracts of open grassland, this assists in fostering an appreciable sense of separation from commercial uses and nearby housing areas which in turn contributes significantly to the semi-rural character and appearance of the locality.
12. Having regard to their substantial overall length and height as well as the construction materials, the fencing and gates are seen as stark, utilitarian structures which pay little regard in terms of design and appearance to the visual qualities of the area. The harsh, vertical profile and fabricated industrial qualities of the fencing and gates are markedly at odds with the softer contours and more naturalistic shapes evident in the surroundings and contribute to a significantly more built-up feel in the locality. Painting stretches of the fencing as well as the gates in a dark green colour has not significantly offset this adverse visual impact.
13. Consequently, erecting the fencing and gates has led to a considerable and harmful erosion of the established character and appearance of the surrounding area. There is failure to accord with criteria in Policy 26 of the Havering Local Plan (LP), as the fencing and gates are not informed by nor do they respect and complement the distinctive qualities, identity and character of the site and the local area, they are not of a high architectural quality and design, do not respect, reinforce and complement the street scene, they do not fully integrate with neighbouring developments and are not built of high quality materials. Furthermore, the fencing and gates fail to accord with criterion in LP Policy 27, as they do not integrate with and are not sympathetic to the local landscape character and street scene. Additionally, by failing to achieve a well-designed place the fencing and gates are inconsistent with the Framework.

### *Other considerations*

14. The site is not obviously more isolated or otherwise more vulnerable to activity such as that which the appellant sought to prevent than other nearby land in open uses. Also, there is no firm evidence of incidences of such activity occurring at the site. Accordingly, I afford the appellant's stated reasons for erecting the fencing and gates limited weight. The absence of harm to highway safety is a neutral factor which neither weighs for nor against granting permission.

### *Planning balance*

15. The fencing and gates constitute inappropriate development in the Green Belt, harming openness and conflicting with one of its purposes. There has also been unacceptable harm to the character and appearance of the area. The other considerations do not clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify granting permission for the fencing and gates do not exist.

### *Ground (a) conclusion*

16. The fencing and gates do not accord with the Development Plan and are inconsistent with the Framework. Therefore, I conclude that the ground (a) appeal should not succeed.

### **Ground (g)**

17. The ground of appeal is that the time allowed for complying with the notice requirements is unreasonably short.
18. Since no other grounds of appeal were pursued in respect of the storage use, hard surfacing and access road, the appellant cannot have any reasonable expectation of the notice being quashed. By making an appeal limited to ground (g) only on those matters, they have already delayed the notice coming into effect whilst acknowledging that the requirements to cease the storage use and also to remove the materials associated with that use as well as the hard surface and access road, will all be upheld.
19. In respect of the fencing and gates, the remedial works are straightforward, they are relatively limited in scale and completion could be achieved in a reasonably short timeframe. A wide range of contractors are likely to have the necessary skills and expertise required for undertaking such works. Once appointed, such a contractor is unlikely to need an especially lengthy period of notice prior to carrying out the works. There is no firm evidence of any significant continuing shortages in terms of labour or materials, or of substantial delays in contractors' availability.
20. Therefore, three months strikes an appropriate balance between remedying the planning harm identified in the notice as soon as is practicable whilst also affording the appellant sufficient time to search for and appoint a suitable contractor, to arrange for the undertaking of the remedial works and for their completion. As that is the case, extending the compliance period to at least six months as suggested by the appellant would merely perpetuate the breach and the associated planning harm.
21. Accordingly, the compliance period is not too short, it is reasonable. The ground (g) appeal fails.

### **Conclusion**

22. For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

*Stephen Hawkins*

INSPECTOR