

Appeal Decision

Site visit made on 7 October 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 November 2016

Appeal Ref: APP/R0660/C/15/3141275

Land at Castle Mill Lane, Ashley, Cheshire WA15 0QU

- 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 Christopher John Frankland against an enforcement notice issued by Cheshire East Council.
 - The enforcement notice was issued on 25 November 2015
 - The breach of planning control as alleged in the notice is the material change of use of land from agricultural use to a use comprising the storage/process/distribution of timber/wood, the parking/storage of motor vehicles, plant, machinery/equipment, trailers, large metal containers and other paraphernalia unconnected with the agricultural use of the land and the siting of two metal containers together with associated operational development consisting of the formation of a track, an area of hardstanding and the erection of two buildings/structures.
 - The requirements of the notice are a) cease the use of the land for storage/process/distribution of timber/wood, the parking/storage of motor vehicles, plant, machinery/equipment, trailers, large metal containers and other paraphernalia unconnected with the agricultural use of the land; b) remove from the land of all timber/wood, motor vehicles, plant, machinery/equipment, trailers, large metal containers and other paraphernalia unconnected with the agricultural use of the land; c) remove the track and area of hardstanding shown in the approximate positions shaded blue on the attached plan marked 'Plan B'; d) demolish the two buildings/structures shown in the approximate positions shaded black on the attached plan marked 'Plan B'; e) remove all materials and debris arising from compliance with requirements b), c) and d) above; and f) cover the areas of the land shown shaded blue and black on the attached plan marked 'Plan B' with topsoil and seed with grass seed.
 - The period for compliance with the requirements a) to d) is six months and with requirements e) and f) is eight months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

2. The main issues in the ground (a) appeal are; whether the change of use of the land and the associated operational development is inappropriate development in the Green Belt; second, whether the use causes any other harm; and third, whether the harm caused by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
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The first issue – inappropriate development

3. The Appellant maintains that the use of the land and the buildings upon it fall with the definition of forestry. In this regard he has referred to the case of *Farley v Secretary of State for Scotland [1992] 2PLR123*. The Court found in that case that "...the use of the subjects described in the enforcement notice for stock piling timber extracted from the forest and transferring it onto lorries was functionally essential to the running of these plantations commercially". The lands, or 'subjects', in that case were locations where timber was brought by forestry vehicles and stored temporarily before onward transportation by lorries. The use for temporary storage of timber before onward transport was deemed to be a function of the forestry operation, rather than either a use in its own right or an element of a use elsewhere that resulted in the purposeful use of the timber.

4. The use that is the subject of the enforcement notice being considered in this decision is different to the use that was considered in the *Farley* case. In this case timber is brought onto and stored on the land to be dried, rather than stored temporarily before it is transported elsewhere, and then it is used to create timber products. The use of the land is akin to a light industrial use where materials are brought onto a site for processing or manufacturing into saleable products. The use of the land is not, as a matter of fact, a forestry use.

5. The judgement in *Fordent Holdings Ltd v Secretary of State for Communities and Local Government and Cheshire West and Chester City Council [2013] EWHC 2844 (Admin)* has clarified that development, which includes material changes in the use of land (see Section 55(1) of the Town and Country Planning Act 1990), is inappropriate unless it falls within any of the exceptions set out in paragraphs 89 and 90 of the National Planning Policy Framework (NPPF). The use of the land is not associated with forestry and does not fall within any of the exceptions set out in paragraphs 89 and 90. The buildings and other associated operational development on the land also do not fall within any of the exceptions. The operational development and the change of use of the land alleged in the enforcement notice are inappropriate development.

The second issue – other harm

6. Paragraph 79 of the NPPF states that "The Government attaches great importance to Green Belts. 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". Paragraph 80 sets out five purposes of the Green Belt; one of these being 'to assist in safeguarding the countryside from encroachment'.

7. The change of use of the appeal land is directly contrary to the aforementioned purpose of the Green Belt; the use, which is akin to a light industrial use, encroaches into the countryside. Furthermore, the two mainly open sided buildings that have been erected on the land, the storage of timber and the siting of storage containers, have undermined the openness of the Green Belt. The breach of planning control has caused harm in addition to that by reason of inappropriateness by undermining the fundamental aim of Green Belt policy and by being contrary to one of the five purposes of the Green Belt.

The third issue – other considerations

8. Paragraph 88 of the NPPF states that “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”.

9. The lack of any significant visual harm to the area and the potential for screening by the planting of vegetation are not relevant other considerations. Businesses and other organisations benefit from the services and products that the Appellant is providing through his use of the land and the sustainability credentials of his business operations are not in doubt. But, crucially, the operations are not ancillary to any forestry use of the land or adjoining land and do not justify, in themselves, a countryside location or, as in this case, a Green Belt location. Neither these factors, nor any others mentioned in support of the appeal, either individually or collectively, outweigh the harm that is caused.

10. Encroachment into the countryside has occurred and the openness of the Green Belt has been undermined. In addition, harm is caused by reason of inappropriateness. The harm caused, as a matter of planning judgement, is not clearly outweighed by other considerations and very special circumstances therefore do not exist.

Conclusion

11. The operational development and the change of use of the land alleged in the enforcement notice are inappropriate development, have compromised the openness of the Green Belt, and have resulted in encroachment into the countryside. Furthermore, the harm caused is not clearly outweighed by other considerations and very special circumstances do not exist. Consequently, the ground (a) appeal fails and planning permission has thus been withheld.

John Braithwaite

Inspector