
Appeal Decision

Site visit made on 30 November 2016

by Jean Russell MA MRTPI

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

Decision date: 08 December 2016

Appeal Ref: APP/Z4718/C/16/3147220

Land to the rear of Oakwell House, Nutter Lane, Birstall, Batley, WF17 9LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Brian Mortimer against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 15 February 2016.
- The breach of planning control as alleged in the notice is: without planning permission: the material change of use of land from agricultural land to land used for the storage and parking of vehicles and trailers.
- The requirements of the notice are to: (i) cease the use of the land [shown] edged blue [on the plan attached to the notice] for the purposes of storage and parking of vehicles and trailers and; (ii) return the land to its former condition by removing the hard surface and resulting debris from the land edged blue.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in s174(2)(a), (d), (f) and (g) of the 1990 Act as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Act.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with a variation.

The Enforcement Notice

1. The appeal site forms part of a wider property owned by the appellant. It is set back but accessed from Nutter Lane to the north. The appellant operates a haulage business from a building and land ('the haulage area') between the site and the road and that use became lawful through the passage of time.
2. The appellant objects that the land edged in blue on the enforcement plan denotes no current features or points of reference, and is identified by 'arbitrary lines'. He suggests that the plan is at an inappropriate scale and out of date, so that it is open to interpretation. Paragraph 2 of the notice describes the site by reference to the plan, and so the appellant has raised questions about the validity of the notice.
3. I saw that the appeal site is defined on the ground; it is roughly surfaced, enclosed by fencing to south and east, and enclosed by a low wall to the north. The access from Nutter Lane leads through the haulage area, into the site via its northwest corner, and then through the site by a fence to the west. The appellant accepted that the lines on the plan 'indicate approximate locations of field boundaries'; I find that the location, size and shape of the site are drawn with reasonable accuracy.
4. I also consider that the site is correctly plotted in relation to nearby buildings, even if 'recent extensions' to them are not shown. Since it is not unusual for attached plans to be at a 1:1250 scale, I am satisfied that the notice is not unacceptably vague. It is clear where the breach of planning control is alleged to have taken place and where the requirements of the notice must be carried out.

The Appeal on Ground (d)

5. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of a breach of planning control which may be constituted by the matters stated in the notice. The onus of proof is on the appellant and the standard of proof is the balance of probabilities.
6. Under s171B(1) of the 1990 Act, no enforcement action may be taken in respect of operations until after the end of the period of four years beginning with the date of substantial completion. S171B(2) relates to a change of use of a building to use as a single dwellinghouse. Under s171B(3), no enforcement action may be taken in the case of 'any other breach of planning control' until after the end of the period of ten years beginning with the date of the breach.
7. The alleged material change of use falls to be considered under s171B(3). The appellant does not claim that the change of use had occurred by 15 February 2006 or that the use continued for any ten year period. His case is that the hard surface falls to be considered under s171B(1) and was substantially completed more than four years prior to the date of the notice. The surface is not described in the breach of planning control, however, and it cannot be subject to a ground (d) appeal.
8. The appellant suggests that the notice is inconsistent because the hard surface is subject to a requirement and not the allegation. However, it is a well-established principle of enforcement case law that a notice directed at a material change of use may require the removal of works integral to the use, even if the works would be immune from enforcement action in their own right. I shall consider whether the requirement to remove this hard surface is excessive under ground (f).
9. I conclude that, at the date that the notice was issued, it was not too late for the Council to take enforcement action in respect of the alleged material change of use of land. The appeal on ground (d) fails.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Scope of the Ground (a) Appeal and the DPA

10. The appellant does not dispute that the alleged change of use took place; he concedes that vehicles and trailers were stored or parked on the land through 'natural expansion' of the haulage business. However, he has also said that lorries and other vehicles have been removed from the site; only six trailers remain and these are being used to store straw and hay for his livery business. He explained that it is essential to site trailers on the land for storage related to the 'outdoor sport and recreation' use, which represents an agricultural diversification scheme.
11. Like ground (d), ground (a) relates to 'the matters stated in the notice'. The DPA is for the development which has been carried out; it derives its terms directly from the allegation. Under s177(1)(a) of the Act, planning permission may be granted in relation to the 'whole or any part of those matters or...the whole or any part of the land to which the notice relates' but I have no power to grant permission for something completely different from that being enforced against.
12. It is also apparent from the notice that the Council considers agriculture to be the lawful use of the site. The grazing of horses need not result in a material change of use of farmland – but recreational equestrian activities can do so depending on fact and degree. With no information as to the extent of the livery business or when it commenced, I could not speculate as to whether the use of the land for the storage of hay and straw in trailers for a livery would be lawful now or represent a different material change of use from that being alleged.

13. Notwithstanding that the alleged use may have ceased, the appellant has paid the fee for consideration of ground (a) and the DPA. He stated in his grounds of appeal that 'the change of use ought to be granted planning permission'. I shall consider the case for permitting the storage and parking of vehicles and trailers.

Main Issues

14. The appeal site lies within a Green Belt. The *National Planning Policy Framework* (the Framework) states that inappropriate development in the Green Belt is harmful to the Green Belt by definition and should not be approved except in very special circumstances. The main issues for this appeal are:
- whether the material change of use of land to use for the storage and parking of vehicles and trailers is inappropriate development in the Green Belt;
 - the effect of the use on the openness of the Green Belt and the purposes of including land within it;
 - its effect on highway safety; and
 - whether any harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

15. The Framework states that the construction of new buildings is inappropriate development in the Green Belt except in specified circumstances. The Framework then describes other forms of development which need not be inappropriate in the Green Belt – and the list does not include the making of a material change of use of land. This means that the alleged change of use to the storage and parking of vehicles and trailers is inappropriate development in the Green Belt.
16. The Framework states that engineering operations need not be inappropriate development in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The formation of the hard surface on the site was an engineering operation but this development is not alleged and I cannot consider the case for permitting it in its own right¹. Insofar as the surface is associated with the unauthorised use, it facilitates harm to the openness and purposes of the Green Belt as discussed below.
17. I conclude that the alleged material change of use is inappropriate development in the Green Belt and harmful to the Green Belt by definition. In accordance with the Framework, I attach substantial weight to this harm.

The Openness and Purposes of the Green Belt

18. The Framework states 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 permanence. The purposes of including land in Green Belts include assisting in safeguarding the countryside from encroachment.
19. The site adjoins the haulage area to the northwest, the garden at Oakwell House to the north, and fields to the east, south and west; it is mainly surrounded by open land. As noted below, the site was itself previously a grassed field and so it would have been an area of countryside that added to the openness of the Green Belt.

¹ Had I allowed the appeal on ground (a) and granted permission for the use, the notice would have been quashed and then the appellant would not have needed to comply with the requirement to remove the hard surface.

20. Permitting the alleged use could plainly lead to the storage and parking of lorries and lorry trailers – which I would describe as long and bulky chattels or structures. The site is sufficiently large that the use could occur on a significant scale; a condition could restrict the number of vehicles and trailers kept, but not so as to place a disproportionate burden on the appellant. I find that the extent and nature of the use would result in a serious loss of openness in the Green Belt.
21. The site is within hearing distance of but not visually associated with the M62. Dwellings in the wider area are separated from the site by countryside. There is a public footpath to the east and the use would be seen from there as being in the foreground of and an extension to the haulage area. The site is some metres from the footpath; it is also partly screened, particularly from Nutter Lane. Nevertheless, the use would not have any positive impact on the openness of the Green Belt in visual terms, so as to outweigh or justify the actual loss of openness.
22. Since the site was previously used for grazing, I also find that the alleged use would encroach upon the countryside, in conflict with the purposes of including the land within the Green Belt. I attach substantial weight to the harm caused to the openness and purposes of the Green Belt.

Highway Safety

23. Nutter Lane is an unclassified rural road that leads from the A652 past Oakwell Hall and Country Park and the appellant's property to Nova Lane, which serves a more built-up area and terminates at the B6125. Thus, Nutter Lane is part of a through route and it provides access to land other than the site. However, I saw that the carriageway is sufficiently narrow that even the drivers of cars must slow down to pass each other and/or wait at passing places.
24. Since the appellant's haulage business became lawful through the passage of time, it follows that HGVs will have been driven along Nutter Lane for at least ten years. I cannot speculate as to the planning status of the livery business but I will accept, for the purposes of considering this planning issue, that horse boxes and trailers have also been driven to and from the appellant's land. The Council has not shown that these existing uses have led to, for example, recorded road traffic accidents.
25. However, the site is large enough that the alleged use could take place on a considerable scale. In my view, allowing the parking and storage of vehicles and trailers here would result in a material rise in the movement of heavy vehicles along the constricted Nutter Lane. There would be an increased risk of congestion and collisions, if and when, for example, drivers reverse to passing places.
26. The Framework expects that developments which would generate significant amounts of movements should be supported by a Transport Statement or Assessment, and should achieve safe and suitable access. I find that the use would be liable to generate a significant amount of movement in relation to the standard of the carriageway. The appellant has not provided information to persuade me otherwise, or show that the use would have a safe and suitable access.
27. From the size of the site, the nature of the use, the layout of Nutter Lane and the lack of evidence from the appellant, I conclude that allowing the appeal would be liable to result in an unacceptable loss of highway safety. The use would conflict with the Framework and Policy T10 of the *Kirklees Unitary Development Plan* (UDP), which does not permit development that would create or materially add to highway safety problems or, if it would generate a significant number of journeys, it could not be served adequately by the existing highway network. Given the serious consequences associated with loss of highway safety, I attach considerable weight to the harm that could be caused by the use in this respect.

Other Considerations

28. The Framework describes that 'very special circumstances' will not exist unless harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
29. The Framework supports sustainable economic development, including the development and diversification of agriculture and land-based rural businesses. However, the appellant has not shown that the appeal use could only be operated from this site, or that it would achieve economic or other benefits capable of clearly outweighing the harm caused to the Green Belt. Since I cannot consider the case for the use of trailers for storage in association with a livery business, I attach little weight to the considerations advanced in favour of the appeal.

Planning Balance and Conclusion

30. I have found that the alleged use is inappropriate development in the Green Belt. I attach substantial weight to the harm caused to the Green Belt by definition, and through loss of openness and encroachment into the countryside. The scales are further tipped against the appeal by the threat posed by the use to highway safety – and the other considerations advanced do not outweigh the harm.
31. I have had regard to all other matters raised. Looking at the case as a whole, in accordance with the Framework, I conclude that very special circumstances do not exist to justify a grant of planning permission for the development, which conflicts with the Framework and UDP Policy T10. It follows the appeal on ground (a) should fail and the DPA should be refused.

The Appeal on Ground (f)

32. Ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or any injury to amenity which has been caused by the breach. In considering whether the steps are excessive, it is necessary to look at the purpose of the notice. It alleges that a material change of use has taken place and it requires that the use must cease; this means that the purpose of the notice is to remedy the breach.
33. I have found that the plan attached to the notice makes it clear where the breach has taken place and the requirements apply. I have considered the merits of the use under ground (a) and concluded that planning permission should be withheld. It is not excessive for step (i) of the notice to be that the use must cease. The appellant has not proposed a lesser step which might remedy the breach.
34. Turning to step (ii), the appellant claims that that the hard surface was laid to provide circulation space for horseboxes and trailers, and the loading/unloading of horses and ponies. While an enforcement notice concerned with a material change of use can require the removal of operational development which is integral to the unauthorised use, that principle does not apply if the works were undertaken for a different and lawful use, and could be re-used for that lawful purpose.
35. However, the appellant has not shown that there is a lawful livery use and I cannot determine whether this is so through this appeal. I also note that the 2009 and 2011 Google Earth photographs appear to show lorries on the land which were similar to lorries on the haulage area. The appellant's final statement refers to the hard surface being used for parking HGVs and 'also a degree of storage for hay and straw' [my emphasis]. It has not been shown that the hard surface was laid or could be re-used for a lawful purpose.

36. The appellant suggests that the reference in step (ii) to the 'former condition' of the site is vague, but s173(4)(a) is explicit that the requirements of a notice may achieve purposes including 'remedying the breach...by restoring land to its condition before the breach took place'. The landowner is often the person with the best knowledge of what that condition was and the appellant has stated here that the land was grassed before he laid the hard surface.
37. I also find that the requirement to remove the hard surface and 'resulting debris' is plain, unambiguous and necessary to ensure that the site is restored to its previous condition. I conclude that the requirements of the notice are not excessive to remedy the breach of planning control. The appeal on ground (f) fails.

The Appeal on Ground (g)

38. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggests that he would need 12 months rather than one in order to restore the site to its previous condition.
39. I have been unable to speculate as to the lawfulness of the livery use but that has implications for the hard surface. It would be reasonable to extend the period for compliance with step (ii) to give the appellant time to discuss this matter with the Council and/or apply for planning permission or a lawful development certificate.
40. In the event that the surface must be removed, I am not persuaded that this could only take place in fair weather. I accept that returning the site to its previous condition might involve the spreading of soil and grass seed, but even so the works as a whole need not take long. The appellant might need to maintain the grass for his own purposes, but not to comply with the notice.
41. Taking all of the circumstances into account, I conclude that it would be reasonable to vary the notice so that the appellant has six months to comply with step (ii). From the representations on ground (g), however, and the fact that some vehicles have already been removed, I have no reason to extend the period for compliance with step (i). To a limited extent, the appeal on ground (g) succeeds.

Conclusion

42. For the reasons given above and with regard to all other matters raised, I conclude that the enforcement notice should be varied and the appeal should be dismissed.

Decision

43. The enforcement notice is varied by deleting the text of paragraph 5 in its entirety and substituting: '*(i) within one month of the date that this notice takes effect, cease the use of the land edged blue on the plan attached to this notice for the purposes of the storage and parking of vehicles and trailers; and (ii) within six months of the date that this notice takes effect, return the land to its former condition by removing the hard surface and resulting debris from the land edged blue on the plan attached to this notice.*'
44. 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 s177(5) of the 1990 Act as amended.

Jean Russell

INSPECTOR