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# Appeal Decision

Site visit made on 6 December 2016

**by Martin Joyce DipTP MRTPI**

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

**Decision date: 14 December 2016**

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**Appeal Ref: APP/W1525/C/16/3150570**

**Land to the south of Oak Lodge, Loves Green, Highwood, Chelmsford, Essex CM1 3QH**

- 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 D Smith against an enforcement notice issued by the Chelmsford City Council.
- The enforcement notice, LPA Ref: 16/00026/ENF, was issued on 22 April 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land for storage, the deposit of waste materials and the sale of motor vehicles.
- The requirements of the notice are:
  - (i) Cease using the land for storage, the deposit of waste materials and the sale of motor vehicles;
  - (ii) Remove from the land all motor vehicles including a mixer vehicle, skips and containers and other miscellaneous items including pallets, vehicle parts, pipe work and construction materials and any other item stored on the land; and,
  - (iii) Remove from the land to an authorised place of disposal all waste materials deposited including building rubble and waste construction materials, earth and general refuse.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed planning application also falls to be considered.

**Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.**

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## Matters Concerning the Notice

1. The address to which the enforcement notice relates contains an incorrect postcode – CM1 3JQ. The correct postcode is given in the heading above. Correction of this error would not cause injustice to either party, thus I shall use the powers available to me under Section 176(5) of the Town and Country Planning Act 1990 (The Act) accordingly.

## The Appeal Site and Planning History

2. The appeal site is an elongated piece of land situated on the western side of Pool's Lane, approximately 140m south of the residential curtilage of Oak Lodge, an extended bungalow occupied by the appellant. It borders, to the south, an area of land, owned by the appellant, that was the subject of a planning application approved on 3 June 2015 for, amongst other things, the
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commercial use of the site area for the storage of vans for sale<sup>1</sup>. This permission included a plan (No 2530/05) which divided the overall site, including Oak Lodge and its curtilage, into four areas, shown as A-D. Area B is identified as the commercial yard used for vehicle and container storage, whilst Areas C and D are marked as to be reinstated to unused land. Existing storage containers in Area C are to be relocated to Area B. Condition 2 of the planning permission requires development to be carried out in complete accordance with the approved plans.

3. The enforcement notice concerns Areas C and D, and I shall use such reference for ease in my subsequent deliberations. An informative of the 2015 planning permission states that those areas shall be cleared of all commercial items and caravans within three months, with enforcement action likely to be pursued if this is not done. Subsequently, however, a further planning application was made, in February 2016, for the change of use of Area C to a use for the storage of vans for sale<sup>2</sup>. This application was refused on 19 April 2016.
4. I saw that Area C is still being used for the storage of vans for sale, as an extension of the use permitted in Area B. The area is hard surfaced with compacted gravel and road planings, and approximately ten or eleven vans displayed for sale at the time of my inspection. The whole of the commercial yard is fenced with metal panels of up to about 3m in height, albeit that mature deciduous trees and hedging border both Pool's Lane, to the east, and the open arable farmland, to the west. A gate leads southward into Area D, which is similarly enclosed with metal security fencing of up to about 2m in height. This part of the site is unsurfaced, being largely covered in soil that appears to have been spread recently, albeit with some bricks and rubble evident on the surface. Around the edges of the site are remnants of former usage for the storage of waste materials; including piles of soil material and wood, some of which has been shredded, a skip with other green waste, pallets and an armchair, an empty shipping container, a plastic tank, sections of metal fencing and a large plastic crate. Two dumpers and a trailer were also stationed on the land.
5. In the wider area, I saw that there is a small industrial estate on the eastern side of Pool's Lane, opposite the northern part of the appeal site, with a variety of uses, including motor repair businesses. A further site to the south, at the end of the road, is occupied by, amongst others, Brentwood Auto Spares Ltd, an automobile salvage business.

### **THE APPEAL ON GROUND (b)**

6. The appeal on ground (b) is based upon the contention that the site has not been used for the deposit of waste materials, although the other elements of the alleged material change of use are undisputed. Building work has been undertaken at Oak Lodge, in pursuit of a planning permission for alterations and extensions, and it is the resultant building materials from those operations that have been temporarily kept on the land. They are not being stored or deposited as a final resting place and there is no intention to keep them on the land, rather it is part of a staged operation to improve the land, thus an allegation of operational development might be more apposite.

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<sup>1</sup> LPA Ref: 15/00604/FUL.

<sup>2</sup> LPA Ref: 16/00306/FUL.

7. The Council, however, maintain that the site has been used for the deposit and storage of a variety of waste, and produce photographic evidence showing general refuse, waste car parts, garden waste, building rubble and waste construction materials in both 2013 and 2016, as well as aerial photographs from 2012 and 2013. The appellant's case that the material has been temporarily placed there during building alterations and extensions at Oak Lodge is not accepted as work did not start on that property until 2015, and was completed before the last of the Council's photographs in 2016. Additionally, much of the waste observed on the site is not associated with work on the dwelling, which is within a separate planning unit. This includes waste and scrap from the van sales business, as well as general waste from the residential occupation of Oak Lodge and elsewhere.
8. In considering these matters I am mindful of the fact that the burden of proof in an appeal on legal grounds, including grounds (b) and (c), lies with the appellant<sup>3</sup>. He must show, on the balance of probabilities, that the alleged breach of planning control has not taken place as a matter of fact. However, in this case there is clear and irrefutable evidence that waste material has been deposited and stored on the land, and in Area D in particular. The Council's photographs taken in November 2013 and April 2016 show piles of waste material, including corrugated metal sheeting, vehicle parts, pallets and a wide variety of general waste, and I saw at my inspection that some material remains on the site, including soil and piles of vegetative waste, as well as a skip with further waste. This waste has been deposited on the land, irrespective of whether or not it is intended to be its final resting place, and this is a use of the land, having regard to the provisions of Section 55(3)(b) of The Act. Additionally, whilst some of the waste may have been associated with building work at Oak Lodge, I consider that the Council are correct in their claim that that property forms a different planning unit but, even if this were not the case, it would not overcome the fact that waste has been brought onto and stored on the land as a matter of fact. The appeal on ground (b) therefore fails.

### **THE APPEAL ON GROUND (c)**

9. On ground (c), the appellant contends that the planning permission granted in 2015 allows for the progressive clearance of the land in Areas C and D, albeit without any time limit as there was no specific condition other than that for the commencement of the development, and a requirement that it be carried out in accordance with the approved plans. The notice does not allege a breach of a planning condition, and the land is being progressively cleared, albeit that permission has been sought for the continued use of Area C for van sales. The enforcement notice is therefore seeking action against a use of land that has planning permission to be cleared and ground (c) should succeed on this basis.
10. The arguments put forward by the appellant in this ground of appeal are, however, unsustainable. The notice alleges a material change of use of the land to a use for storage, the deposit of waste materials and the sale of motor vehicles, and that change of use has taken place as a matter of fact. The 2015 planning permission was for the commercial use of an area of land to the north of the appeal site for the storage of vans for sale, the retention of new gates to the existing site entrance, the relocation of existing storage containers to

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<sup>3</sup>*Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

within the site curtilage, and the retention of a container. The site to which this permission appertains is that outlined in red on the approved plans, which is Area B. There is, therefore, no approval of planning permission for any change of use of the land that is the subject of the current enforcement notice.

11. Furthermore, whilst it is permissible for conditions to cover other land in an applicant's control, there is no specific condition that Areas C and D should be cleared, only a requirement to undertake the development in accordance with the approved plans. Those plans do, as a matter of fact, show that Areas C and D are to be returned to being unused land, in part through the relocation of containers from Area C, but there is no condition that requires action within a specific time period, notwithstanding that the development was to commence within three years, which has clearly happened. In all of the above circumstances, the appellant has not met the required burden of proof and shown that planning permission is not required for the material change of use that is alleged to have taken place. That use requires planning permission which has not been granted. The appeal on ground (c) therefore fails.

### **THE APPEAL ON GROUND (a)**

12. The appeal on this ground concerns only the use of Area C for the continued storage of vans for sale, including any ancillary parts, in conjunction with the approved use of the adjoining area (Area B), which was granted planning permission in 2015. Permission is not sought for any continued use of Area D, or for the other elements of the breach of planning control alleged in the notice.

### **Planning Policy**

13. The appeal site lies within the Metropolitan Green Belt (MGB) thus policies within Section 9 of National Planning Policy Framework (The Framework) are applicable.
14. The Development Plan for this area includes the Core Strategy and Development Control Policies Development Plan Document 2001-2021 (CSDCP), which was adopted in 2008 and was the subject of a Focused Review in 2013. The Review was adopted in December 2013 following examination by an independent Inspector who found it to be, subject to some minor changes, compliant with The Framework. It carries the fullest weight, therefore, in the context of this appeal.
15. The Council, in their case under this ground of appeal, rely upon the provisions of The Framework and also Policy DC1 of the CSDCP. This is entitled "Managing Development in the Metropolitan Green Belt". The policy follows, essentially, that set out in paragraphs 89 and 90 of The Framework.

### **Main Issues**

16. The main issues in this ground of appeal are:
  - (a) Whether the proposal would be inappropriate development in the MGB having regard to the National Planning Policy Framework and any relevant Development Plan policies;
  - (b) The effect of the proposal on the openness of the MGB;

- (c) The effect of the development on the character and appearance of the surrounding area; and,
- (d) Whether, if the proposed development constitutes inappropriate development in the MGB, there are any material considerations sufficient to clearly outweigh the harm to the MGB, and any other harm, thereby justifying approval on the basis of very special circumstances.

## **Reasoning**

### ***Whether Inappropriate Development***

17. Paragraph 87 of The Framework states that, as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The development for which planning permission is being sought is the change of use of a part of the appeal site to a use for the display of vans for sale. Paragraphs 89 and 90 set out the types of development that may be considered to be not inappropriate in the Green Belt, and the list does not include the change of use of land. Moreover, these paragraphs have been found, in pertinent case law<sup>4</sup>, to be a “closed list”.
18. The appellant suggests that the site is brownfield land, as it has been redeveloped and reused from its original purpose, including through the storage of containers. However, I have seen nothing to suggest that such use was lawful, as was found by the Council to justify approval of the use of Area B in 2015, thus it would not fall within the definition of previously developed, or brownfield, land set out in the Glossary to The Framework. For all these reasons, I conclude on the first issue that the retention of the use of Area C for the storage of vans for sale would be inappropriate development in the MGB having regard to The Framework and Policy DC1 of the CSDCP.

### ***Effect on Openness***

19. The appellant contends that there would be no impact on the openness of the MGB through use of the land for the storage of vans for sale. The whole of the appeal site is surrounded by robust metal security fencing, and this is reinforced by dense vegetation around the external boundaries. Moreover, there would be no buildings on Area C, merely the parking of vehicles on a hard permeable surface that is not required to be removed by the enforcement notice. Thus, having regard to the judgement in *Lee Valley Regional Park Authority*<sup>5</sup>, where it was found that the concept of openness means the state of being free from buildings as distinct from the absence of visual impact, there would be no effect on the openness of the MGB at this point.
20. I do not, however, consider that the rather selective extract from the judgement in *Lee Valley Regional Park Authority* is relevant to the issues before me in this appeal, not least because that case concerned the policy relating to the erection of agricultural buildings in the Green Belt. My understanding of the judgement in that case is that, amongst other things, it was found that impact on openness is implicitly taken into account in the exceptions listed in paragraph 89 of The Framework, unless there is a specific requirement to

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<sup>4</sup> *Fordent Holdings v Secretary of State for Communities and Local Government and Cheshire West and Chester City Council* [2013] EWHC 2844 (Admin).

<sup>5</sup> *Lee Valley Regional Park Authority v Epping Forest DC* [2016] EWCA Civ 404.

consider it, such as in the provision of appropriate facilities for outdoor sport or recreation. This point does not arise in the development before me. In addition, and notwithstanding that the hardstanding may not, in itself, affect openness, as with many types of surface treatment of land, the purpose of it – to provide a parking area for the display of vehicles – would undoubtedly have an impact on openness, as was found in the judgement in *Turner*<sup>6</sup>. Moreover, the fact that the appeal site is well contained and largely hidden from public view is not a good argument as that could apply to many sites in the MGB which, if subsequently developed because they could not be seen, would lead to a severe diminution in the effectiveness of Green Belt policy and the reasons for its designation in the first place.

21. The proposal to retain part of the appeal site as an extension to the area for the storage and display of vans for sale would therefore harm the openness of the MGB as an area which would otherwise be open and free of objects would be largely covered, for substantial periods of time if not permanently, with vehicles. I conclude, therefore, on this issue, that the openness of the MGB would be materially harmed contrary to Policy DC1 of the CSDCP and The Framework.

### ***Effect on Character and Appearance***

22. The character of the surrounding area is largely rural with arable agricultural uses predominating, albeit that there are also some discordant industrial uses, alongside Pool's Lane, as noted above, and a small enclave of housing, at Loves Green, together with associated paddocks and horse stabling. In terms of appearance the area is largely flat but is attractive with much mature vegetation, especially along field and roadside boundaries. The value of the open countryside in this area is also shown by the fact that there is a small picnic area alongside the eastern edge of Pool's Lane to the south of the appeal site. This indicates that Pool's Lane, which is a public bridleway, has recreational value as part of a network of tracks and footpaths in this part of the MGB.
23. The site as a whole, and Area C in particular, is well screened by existing mature, largely deciduous, vegetation and the incongruous metal security fencing. This limits, to a significant extent, views of the extension to the authorised van sales area in Area C. However, as with my findings in relation to impact on the openness of the MGB, this does not justify the development of land simply because it is hidden from public view. Any extension to the incongruous industrial uses in this attractive rural area would, in my opinion, be materially harmful to the area's character and it cannot be assumed that existing screening would always remain, not least because future owners might not be as willing to maintain either the fencing, which is itself visually jarring, or the roadside vegetation.
24. My conclusion on the third issue is that the continued use of the appeal site, in part, for the storage of vans for sale would materially harm the character and appearance of the surrounding area as it would extend an existing incongruous use further into the rural countryside adjacent to a public bridleway. Such encroachment into the countryside would conflict with one of the five aims of Green Belt policy as set out in paragraph 80 of The Framework.

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<sup>6</sup> *John Turner v SSCLG and East Dorset Council* [2016] EWCA Civ 466

### ***Very Special Circumstances***

25. Having found that the proposed continuation of the existing use on Area C would be inappropriate development in the MGB, and thereby harmful by definition<sup>7</sup>, and would also reduce openness and cause harm to the character and appearance of the surrounding area, it is necessary to consider whether there are any material considerations which would amount to very special circumstances sufficient to clearly outweigh such harm.
26. In this context, the appellant suggests that a number of matters should be taken into account. The addition of Area C to the approved commercial use of Area B, an enclosed site with an industrial ambience already viewed as a single unit, would support the vitality and viability of the business and foster economic growth in a manner supported by paragraph 19 of The Framework. It would also be a sustainable way to expand the existing business rather than by seeking potentially more intrusive or less sustainable alternatives or locations, or through splitting the business into different yards at different locations. Planning conditions attached to any grant of planning permission could ensure additional landscaping to the southern boundary, or control over surface materials, to overcome any concerns about further expansion into Area D and, as a fallback position, Area C could be laid to grass and used as a customer car park, thus not being a change of use for storage or sale purposes.
27. In considering these matters I have taken account of the support given in The Framework to sustainable economic growth, including in rural areas, albeit that the use currently taking place on the adjoining land is not one that would normally be located in such an area. Moreover it is questionable whether an expansion of an incongruous commercial use in the open countryside is truly sustainable development as it would encourage prospective patrons and customers to travel beyond urban areas where such uses would normally be found. In any event, I have no figures before me, including any business plan, to show the extent to which this relatively small additional area would benefit the appellant's business in economic terms. There is nothing, for example, to show present or predicted turnover, no information about the number of employees, and no indication of how the overall site and business would be run and managed either with or without Area C. Indeed, the prevention of an expansion of this nature may provide the trigger to a more sustainable move to a location within an allocated industrial or commercial area in a nearby town, albeit that no information, either way, has been provided about other sites for either the entire business or a part of it.
28. Planning conditions could clearly be imposed on any grant of planning permission to secure additional landscaping, although I have already taken the site's relative seclusion into account in my deliberations on the second and third main issues, and this adds little weight in favour of the development. Use as a car park, even if the site is grassed over, would not, however, represent a fallback position, as it would still be a change of use of the land to a use ancillary to that taking place in Area B.
29. I conclude that none of the material considerations put forward is sufficient, either individually or cumulatively, to clearly outweigh the harm to the MGB found in relation to the first three main issues. The proposals would conflict

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<sup>7</sup> Paragraph 87 of the National Planning Policy Framework.

with the Development Plan and pertinent National Planning Policy in The Framework.

30. It follows from my conclusions on the main issues that the appeal on ground (a) fails, and that planning permission will not be granted.

### **THE APPEAL ON GROUND (f)**

31. The appellant contends that the requirements of the notice are, in part, excessive. Whilst the principle of the cessation of the use is not disputed, some of the items that the appellant would be forced to remove are not intrinsic to the change of use that has taken place, particularly construction materials and a mixer vehicle associated with building works at Oak Lodge. These will be removed as a matter of course, as will waste also associated with the building works, notwithstanding the arguments put forward under ground (b). It is also excessive to require the removal of "earth" from the site, particularly as it is a requirement of the 2015 planning permission that the land be restored. Any restoration is likely to involve the spreading of topsoil in order to help it seed, thus such material could assist in that process.
32. The notice requires that various steps be taken to remedy the condition of the land. I take this to be in pursuit of Section 173(4)(a) of The Act, which sets out the purposes that a Local Planning Authority may use an enforcement notice to seek, including restoring the land to its condition before the breach took place. In this case I note that the wording of the allegation includes storage as a specific element of the unauthorised use taking place, which would cover any items temporarily placed on the land, including those associated with any building work at Oak Lodge. The appellant has not argued that such storage has not taken place or, under ground (c), that it does not require planning permission, therefore it is entirely reasonable that the notice should seek its removal. Indeed the appellant appears to accept that in saying that it will, in due course, be removed from the land, albeit in pursuit of the requirements of the 2015 planning permission. This document, however, places no time limit on the restoration of Areas C and D to unused land and reliance on the terms of that permission would remove the immediacy of action to terminate an unauthorised and harmful use in the MGB that necessitated the issue of an enforcement notice.
33. As for the possible ambiguity of the word "earth" and the suggestion that such material could assist in restoration, I consider that the appellant is not reading Step (iii) of the notice in the correct way. That step requires all *waste materials (my emphasis)* deposited on the land to be removed, including building rubble and waste construction materials, earth and general refuse. It is only "earth" that has been deposited as waste that needs to be removed and, whilst I agree that it would be more usual to use the word "soil", or the term "soil materials", than "earth", there can be little doubt as to what the notice refers to. It does not mean that soils or general earth which existed on the site before the breach took place need to be removed.
34. As to the possible use of such material for restoration purposes, it may be that some soil material is suitable for spreading to provide an appropriate medium for seeding. Indeed, I saw that some movement of soils appears to have been recently undertaken in Area D, although that spreading shows evidence of construction waste in the form of bricks and small bits of concrete. Moreover, the appellant is at liberty to discuss with the Council whether some material

may be retained in order to achieve compliance with the 2015 planning permission, but I am satisfied that, for the purposes of this appeal, the requirement to remove waste material that has been deposited on the land is entirely reasonable. For all of these reasons the appeal on ground (f) fails.

### **THE APPEAL ON GROUND (g)**

35. On ground (g), the appellant contends that a period of three months is unreasonably short and that a six month period should be allowed to comply with the requirements of the notice. Such an extension would show "leniency" in circumstances where the appellant has already shown willingness in clearing Area D.
36. These reasons for an extension of the time period do not, in my view, provide any justification for success on this ground. Leniency is inappropriate in circumstances where an unauthorised use is causing harm, particularly on a site in the Green Belt. Willingness to tidy up an area of land may well have been shown, but there are still a number of items and various types of waste on Area D, and the whole of Area C is being used for the storage of vans displayed for sale. There is no physical reason why the use cannot cease, and the other requirements met, within three months. The appeal on ground (g) therefore fails.

### **Other Matters**

37. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

### **Conclusions**

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

### **FORMAL DECISION**

39. The enforcement notice is corrected by the deletion, in Section 2, of the postcode "CM1 3JQ" and the substitution therefor of the postcode "CM1 3QH". Subject to this correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

*Martin Joyce*

INSPECTOR