

Appeal Decision

Site visit made on 27 February 2017

by John Whalley

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

Decision date: 07 March 2017

Appeal ref: APP/P1805/C/16/3156220

Shepherd's Croft, Old Rectory Lane, Alvechurch B48 7SU

- The appeal was made by Mr Mark Darlaston under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Bromsgrove District Council.
- The notice was issued on 5 July 2016.
- The breach of planning control alleged in the notice was: Without planning permission:
 - a. the making of a material change of use of the Land from horticultural purposes to a mixed use including: the storage of caravans, motor homes, containers, shipping containers, boats and trailers and portaloos, the stationing of articulated trailers and flat bed lorries in connection with the transportation of vehicles and caravans.
 - b. the carrying out of operational development on the Land marked "x" and "y" on the plan attached to the notice by the stationing of 2 portacabins on the Land for use as sales office and storage of equipment in connection with the business of hiring of motor homes.
- The requirements of the notice are to:
 1. Stop using any part of the Land for the storage of caravans, containers, shipping containers, boats and trailers and portaloos and remove from the land all caravans, containers, shipping containers, boats and trailers and portaloos;
 2. Stop using any part of the Land for the stationing of articulated trailers and flat bed lorries and remove all articulated trailers and flat bed lorries from the land;
 3. Stop using any part of the Land as a motorhome hire depot and remove from the land all motorhomes, portacabins and equipment brought onto the land for the purpose of that use;
 4. Restore the Land to its condition before the breach took place.
- The period for compliance with the requirements is 2 months.
- The appeal was made on grounds (a), (d), (f) and (g).

Summary of Decision: The enforcement notice is varied and upheld.

Appeal site

1. The appeal site is an approximately rectangular area of about 70m x 90m of hardcore surfaced land. It is in predominantly open countryside Green Belt land behind the house, Shepherd's Croft, between the village of Alvechurch and the M42 motorway junction 2 with the A441 road. At the time of the appeal visit, the site was fully occupied by a large number of parked motorhomes, some privately owned, some available for hire, touring caravans and trailers.
2. There was a large black painted building in the western corner of the appeal site. There was no reference to this building in either the notice's allegation or its requirements. Towards the north-eastern corner of the land, there were 3 shipping containers used in association with a motorhomes hire business. The containers, described as portacabins in the notice's allegation, were connected to electricity power and water supplies, (the third container seen may have been recently sited). The hire company's motorhomes were parked in rows close by.

The implied ground (c) appeal

3. There was no formal appeal on ground (c), that there had not been a breach of planning control. But the Appellant, Mr Darlaston, held that repair work to the previously existing hardcore surface did not require planning permission. That might have been so – if the original hardcore was lawful and had subsequently been repaired. That is a matter for the ground (d) appeal, below. No case was made to show that an appeal on ground (c) against the alleged breaches of planning control as set out in the enforcement notice could have succeeded.

The appeal on ground (d)

4. The appeal on ground (d) alleges that the breaches of planning control described in the notice had become immune from enforcement action by the passage of time. The burden of proof in a legal ground of appeal such as this lies with the Appellant. The case of *Nelsovil v MHLG* [1962] 1 WLR 404 is authority for that position. It is for an appellant to show, for a ground (d) appeal, that unlawful uses of the land enforced against started more than 10 years before the issue of the notice. For operational development enforced against, the period in which to gain immunity is 4 years, (s.171B of the Act).

Use of the land

5. The previous lawful use of Mr Darlaston's land was said to have been for horticultural purposes. The enforcement notice alleges a material change of use to a mixed use or uses including: the storage of caravans, motor homes, containers, shipping containers, boats and trailers and portaloos and the stationing of articulated trailers and flat bed lorries in connection with the transportation of vehicles and caravans. An application made to the Council in July 2015 for a certificate of lawfulness for the storage of caravans, motor homes, containers, shipping containers, boats and trailers, was refused on appeal in March 2016. For the most part therefore, this enforcement notice appeal may be a reconsideration of the issues raised in the earlier appeal. That makes the task for the Appellant more difficult, particularly unless new supporting evidence is adduced.
6. For the storage use part of the appeal to succeed, it needs to be shown that use of the land, as set out in the notice's allegation, started before 5 July 2006,

continued uninterrupted since, and that there has been no material change in the uses or occupiers of the land that might have changed the planning unit in the period to 5 July 2016. The significance of changes in the use of the land over the requisite 10 year period was not fully addressed by Mr Darlaston. The case of *Burdle and Williams v Secretary of State for the Environment and New Forest RDC [1972] 3 All ER 240* said there were 3 criteria to determine the planning unit. They were:

1. When an occupier uses for a single main purpose to which secondary activities are incidental, the unit of occupation is to be taken as the planning unit.
 2. When a variety of activities none incidental to the other, again consider the entire unit.
 3. When 2 or more areas occupied for substantially different purposes, each area so used is a separate planning unit.
4. Determining what is the planning unit is a matter of fact and degree, (*Church Commissioners v SSE and Gateshead MB [1996] JPL 669*). In this instance, the lease drawn up in March 2013 to let part of the appeal site to Unbeatable Hire Ltd., who hire out motorhomes to members of the public, was acknowledged by Mr Darlaston to have created a new planning unit. That must be right, as the lease plan shows Unbeatable Hire's part of the site at its north-eastern end and the appeal site bisected by its access way. The Unbeatable Hire use is a materially different use to the enforcement notice storage use. That was a factual determination by the previous Inspector. If the Unbeatable Hire access way is shared with the remaining appeal site land, as it must in order to get to and from the north-eastern end of the appeal site, that land has a mixed use for storage, (the parking of private owners' motor homes), and for hire of motorhomes use. In my view, the 2013 changes amounted to a material change of use of the land and the creation of a new chapter in the planning history of the entire appeal site.
5. There is also the building referred to as the commercial building, to be excluded from the designation of the notice land at the suggestion of Mr Darlaston. In order to distance his present case from that which failed in the previous appeal, he said if the Unbeatable Hire land and the commercial building were excluded, the remainder of the appeal site could be shown to have been used for caravan storage for more than 10 years. It was therefore immune from enforcement action.
6. Mr Darlaston may be right on the 10 years' caravan parking or storage point, but not on its immunity from enforcement action. That is because the entire appeal site became a new planning unit in a new mixed use in 2013 as a result of the changes in occupation. In that instance, any existing use rights attached to the former planning unit were extinguished, (*Newbury DC v SSE [1981] AC 578*). The appeal on ground (d) in relation to the use of the appeal site land must fail.

Operational development

7. Mr Darlaston said the whole of the appeal site was covered with hardstanding prior to his purchase of the land in 2005. The previous lawful use had been horticultural, most of the land being covered by glasshouses. That was not disputed.
8. Mr Darlaston was particularly troubled that the notice's requirement was to restore the land to its condition before the breach took place. Did that mean

the removal of hardcore put down in 2009 as part of the re-surfacing of the site came within its ambit? In my view, the notice's 4th requirement does not attack any hardstanding that facilitated the previous lawful horticultural use of the appeal site. But, by saying: "*Restore the land to its condition before the breach took place.*", it includes any works that facilitated or supported the unlawful use, even where that operational development may not have required planning permission, (*Somak Travel v SSE and LB Brent [1987] JPL 630*), or had been in place for more than 4 years. Where the placing of additional hardcore was to enable the land to be used for the purpose of parking vehicles, the placing of that hardcore was simply part and parcel of that use. An enforcement notice can require the removal of ancillary operational development intended to facilitate an unlawful use, (*Murfitt v SSE [1980] JPL 598*).

9. That last point may apply to the shipping containers, (or portacabins as described in the notice). Firstly, the mere placing of a shipping container on ground not specifically prepared for its siting, may not amount to operational development. However, the 2 units enforced against were connected to electricity and water supplies. That, and their apparent degree of intended permanence, suggests that their siting amounted to operational development. That, in isolation, would normally result in the application of the 4 year rule. But, following *Murfitt*, where that operational development facilitated an unlawful use, the 10 year rule applies to the whole development. It was not claimed that the shipping containers had been in their present positions for more than 10 years. The ground (d) appeal in relation to the operational development fails.

The appeal on ground (a)

10. It was Mr Darlaston's case that, by reference to the National Planning Policy Framework, (NPPF), the redevelopment of what he said was a brownfield site did not constitute inappropriate development in the Green Belt. However, 'Brownfield', (previously developed), land is defined in Annex 2 of the NPPF as: "*Land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings;*". Despite heavy reliance on the point by Mr Darlaston, the appeal land is not a brownfield site.
11. It may be deduced from Google Earth aerial photographs that the glasshouses that once covered most of the appeal site were demolished between 2003 and 2005. That earlier horticultural use and its buildings were appropriate to the Green Belt, (*Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Valley Grown Nurseries Ltd. [2016] EWCA Civ 404*). That Court of Appeal decision confirmed that an appropriate agricultural building is regarded by the NPPF as not inimical to openness or to Green Belt purposes. None of the unlawful uses or the operational development set out in the enforcement notice's allegations was shown to be appropriate to the Green Belt. None fall within the exceptions identified in paras. 89 and 90 in the NPPF.
12. 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, (NPPF, para. 79). Para. 80 of the NPPF says the Green Belt serves five purposes. They are: to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to

preserve the setting and special character of historic towns; to assist in urban regeneration by encouraging the recycling of derelict and other urban land.

Para. 87 says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

13. Para. 88 of the NPPF says that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm to the Green Belt, is clearly outweighed by other considerations. Para. 90 says that certain other forms of development are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt.
14. Inappropriate development harms the Green Belt. In the case of *Doncaster MBC v SSETR* [2002] JPL 1509, at para. 70, the Judge said: "*Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the benefit to the appellant's family and particularly to the children so as to amount to very special circumstances justifying an exception to Green Belt policy.*". That approach was endorsed in the case of *Wychavon v SSCLG & Butler*, Court of Appeal EWCA Civ 692 June 2008. The facts in *Doncaster* were obviously different to the present case. But the application of Green Belt policy is similar. Where there is harm to the Green Belt by way of inappropriateness, any other harm to the Green Belt has to be added. That is then balanced against the benefits of the development to see if those benefits clearly outweigh the Green Belt harm, as set out in para. 88 of the NPPF.
15. The case of *Redhill Aerodrome Limited and Secretary of State for communities and Local Government and Tandridge District Council and Reigate and Banstead Borough Council*, [2014] EWHC 2476 (Admin), effectively confirmed what was said in *Doncaster* that "any other harm" is to mean specific harm to the purposes of the Green Belt, but not to include other areas of possible concern, such as highways objections and noise, which are to be considered separately to see whether or not they amount to non-Green Belt reasons to refuse a planning application.
16. Mr Darlaston said that if I found against him on the brownfield land/not inappropriate point, very special circumstances did exist that warranted the grant of planning permission. They were:
 - 1) The site was an established commercial site within the Green Belt for which planning permission was granted by the Council. The Council had therefore historically accepted intensive commercial use of the site.
 - 2) The subject proposal was no more intrusive or harmful both in terms of visual amenity and activities at the site than the previous use for which the Council granted planning permission.
 - 3) The business had been operating for a number of years and as a consequence the Appellant had established a thriving and growing business. The business had a significant turnover and involved the employment of 2 persons.
 - 4) The existing use had a lesser impact on openness than the previous use.

17. In my view, none of the 4 listed reasons either individually or in combination demonstrate that there is such a specific site need for the development enforced against sufficient to clearly overcome the Green Belt harm caused by way of inappropriateness and the harm caused to the otherwise mostly open rural nature of this part of the countryside. The planning permission referred to by Mr Darlaston was in regard to the previous horticultural activities on the land, not to Mr Darlaston's business activities. The second point above again compares an appropriate use with an inappropriate use. Mr Darlaston's business may be of value in providing employment. But that is an unexceptional benefit. It is not specific to this piece of land, nor was it shown to be essential that the business is located in this part of the Green Belt. The fourth point is of little assistance to Mr Darlaston in that again, it compares an appropriate horticultural use that, as was said in *Lee Valley*, was not inimical to openness or to Green Belt purposes with inappropriate commercial uses and operational development that adversely affects that openness.
18. The development enforced against is also harmful to the attractive rural nature of the immediate area, unhappily intruding into otherwise mainly open countryside. The development and the uses enforced against are more suited to an urban location than this rural setting. The development is also contrary to those local Green Belt protection policies set out in the Bromsgrove District Local Plan and the emerging Bromsgrove District Plan that follow national Green Belt protection policy.
19. I conclude that the harm to the Green Belt by inappropriateness, the harm to the openness of the Green Belt and the additional intrusion into this part of the open countryside overwhelmingly determine that planning permission should not be granted for the development set out in the enforcement notice's allegations. That is, planning permission is not granted for the storage of any caravans, containers, shipping containers, boats and trailers and portaloos on the land. Planning permission is not granted to retain the operational development consisting of the stationing of the portacabins on the appeal land.
20. The case put forward by Mr Darlaston did not demonstrate the very special circumstances that have to be shown to overcome the objections to allowing the appeal on ground (a).

The appeal on ground (f)

21. An appeal on ground (f) says that the requirements of the enforcement notice are too onerous and that something lesser should be substituted. Mr Darlaston's case on the storage use of the land was essentially a planning merits argument. Some level of caravan storage should be allowed to continue.
22. The retention, following the upholding of the enforcement notice, of a reduced level of storage use would result in a planning permission under s.173(11) of the Act for the extent of that reduced use. But, as I concluded above that the storage of caravans, containers, shipping containers, boats and trailers and portaloos enforced against should not be granted planning permission. Although the harm caused by the retention of a limited amount of parking might be proportionately less than now, the determining Green Belt and countryside harm objections would remain.
23. Mr Darlaston said the hardcore the Council sought to have removed was there before the unlawful uses started. It had been laid in association with the

previous horticultural use. The requirement to remove the existing hardcore therefore exceeded what was necessary to restore the site to its former condition. Otherwise, the site could be covered with a different, more attractively coloured surface material such as limestone or sandstone.

24. The Council's ground (f) case does not address the distinction between hardcore that was associated with the former lawful horticultural use of the land and the hardcore placed in 2009 to facilitate the unlawful uses. As I indicated in above, I consider that the notice's 4th requirement does not attack any hardstanding that was associated with the previous lawful horticultural use of the appeal site. It only says: "*Restore the land to its condition before the breach took place.*". That is a reasonable and suitable requirement. The appeal on ground (f) fails.

The appeal on ground (g)

25. The appeal on ground (g) asks that more time be given to comply with the requirements of the notice.
26. The Council accepted that the 2 months requirement period could be extended to 6 months to allow more time to re-organise the businesses currently operating from the appeal site.
27. I agree that the 2 month period for compliance is too short. But Mr Darlaston's request for an extended period of 12 months would amount to an unacceptable grant of a temporary planning permission. I increase the period for compliance to 9 months. To that extent, the appeal on ground (g) succeeds.

FORMAL DECISION

28. The enforcement notice is varied by the deletion of the words "2 months" in line 2 of paragraph 6) on page 2 of the notice and the substitution therefor of the words "9 months". Subject to that, the varied enforcement notice is upheld.

John Whalley

INSPECTOR