

Appeal Decisions

Site visit made on 20 March 2017

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

Decision date: 28 June 2017

Appeal A Ref: APP/M0655/C/16/3158446

Land at Caddicks Nursery, Lymm Road, Thelwall, Warrington WA4 2TG

- 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 Act).
 - The appeal is made by Mr Alistair Noone against an enforcement notice issued by Warrington Borough Council.
 - The enforcement notice was issued on 9 August 2016.
 - The breach of planning control as alleged in the notice is building and engineering operations and the material change of use of land consisting of:
 - a) Development associated with an unauthorised dwelling house, including ancillary structures, a driveway and parking area, seating areas, hardstanding, brick pillars, gates and fencing, shown in the approximate position cross hatched blue on the attached plan;
 - b) The construction of a building in use as a retail showroom and ancillary parking area, shown in the approximate position cross hatched green on the attached plan;
 - c) The construction of a cabin building located to the east of the site and shown in the approximate position cross hatched yellow on the attached plan;
 - d) The storage of skips and the use of the land for skip hire and storage business purposes on the land shown edged red on the attached plan;
 - e) The storage of scrap metal and metal shipping containers and the use of the land for scrap metal business purposes on the land shown edged red on the attached plan.
 - The requirements of the notice are:
 - a) Remove from the land all ancillary structures associated with the dwellinghouse, including the driveway and parking area, seating areas, hardstandings, brick piers, gates and fencing, shown in the approximate position cross hatched blue on the attached plan;
 - b) Cease the unauthorised use of the retail showroom shown in the approximate position cross hatched green on the attached plan;
 - c) Remove from the land and not return the retail showroom building shown in the approximate position cross hatched green on the attached plan;
 - d) Remove from the land ancillary structures associated with the retail showroom, including the hard surfaced car park area shown in the approximate position cross hatched green on the attached plan;
 - e) Reinstate the land (cross hatched green and cross hatched blue on the attached plan) to a grassed area via the preparation/cultivation of the land and the use of an "amenity grass mix";
 - f) Remove from the land and not return the cabin building located to the east of the site and shown in the approximate position cross hatched yellow on the attached plan;
 - g) Cease the unauthorised use of the land (shown edged red on the attached plan) for the storage/hire of skips on the land;
 - h) Remove from the land (shown edged red on the attached plan) and not return all skips in connection with the skip hire business;
 - i) Cease the unauthorised use of the land (shown edged red on the attached plan) for the storage of scrap metal;
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- j) Remove from the land (shown edged red on the attached plan) and not return all scrap metal stored externally;
 - k) Remove from the land (shown edged red on the attached plan) and not return all metal containers.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(g) of the Act. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act does not fall to be considered.
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Appeal B Ref: APP/M0655/C/16/3158451

Land at Caddicks Nursery, Lymm Road, Thelwall, Warrington WA4 2TG

- 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 Act).
 - The appeal is made by Mr Vincent Clayton against an enforcement notice issued by Warrington Borough Council.
 - The enforcement notice was issued on 9 August 2016.
 - The breach of planning control as alleged in the notice is building and engineering operations and the material change of use of land consisting of:
 - a) Development associated with an unauthorised dwelling house, including ancillary structures, a driveway and parking area, seating areas, hardstanding, brick pillars, gates and fencing, shown in the approximate position cross hatched blue on the attached plan;
 - b) The construction of a building in use as a retail showroom and ancillary parking area, shown in the approximate position cross hatched green on the attached plan;
 - c) The construction of a cabin building located to the east of the site and shown in the approximate position cross hatched yellow on the attached plan;
 - d) The storage of skips and the use of the land for skip hire and storage business purposes on the land shown edged red on the attached plan;
 - e) The storage of scrap metal and metal shipping containers and the use of the land for scrap metal business purposes on the land shown edged red on the attached plan.
 - The requirements of the notice are:
 - a) Remove from the land all ancillary structures associated with the dwellinghouse, including the driveway and parking area, seating areas, hardstandings, brick piers, gates and fencing, shown in the approximate position cross hatched blue on the attached plan;
 - b) Cease the unauthorised use of the retail showroom shown in the approximate position cross hatched green on the attached plan;
 - c) Remove from the land and not return the retail showroom building shown in the approximate position cross hatched green on the attached plan;
 - d) Remove from the land ancillary structures associated with the retail showroom, including the hard surfaced car park area shown in the approximate position cross hatched green on the attached plan;
 - e) Reinstate the land (cross hatched green and cross hatched blue on the attached plan) to a grassed area via the preparation/cultivation of the land and the use of an "amenity grass mix";
 - f) Remove from the land and not return the cabin building located to the east of the site and shown in the approximate position cross hatched yellow on the attached plan;
 - g) Cease the unauthorised use of the land (shown edged red on the attached plan) for the storage/hire of skips on the land;
 - h) Remove from the land (shown edged red on the attached plan) and not return all skips in connection with the skip hire business;
 - i) Cease the unauthorised use of the land (shown edged red on the attached plan) for the storage of scrap metal;
 - j) Remove from the land (shown edged red on the attached plan) and not return all
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- scrap metal stored externally;
 - k) Remove from the land (shown edged red on the attached plan) and not return all metal containers.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) and (g) of the Act.
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Decision

1. The enforcement notice is corrected by the deletion of requirements a), e), d) and f) in section 5.
2. The enforcement notice is varied by:
 1. the deletion of 'The storage of scrap metal and metal shipping containers and the use of the land for scrap metal business purposes on the land shown edged red on the attached plan' in section 3 of the notice;
 2. the deletion of requirements i), j) and k) in section 5 of the notice;
 3. the deletion of '90 days' in section 6 of the notice and the substitution instead of 'twelve months'.
3. Subject to the corrections and variations the appeals are 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.

Corrections to the enforcement notice

4. After issue of the enforcement notice Officers of the Council met with the Appellant and subsequently resolved to exercise the provisions of Section 173A(1)(b) of the Act and waive certain requirements of the notice. These are included in the Decision above as corrections, as opposed to variations that are the result of conclusions reached on the grounds of appeal.
5. In relation to requirement d) of the notice the Council's statement is contradictory. In a table on page 10 of the statement they include the deletion of 'including the hard surfaced car park area' but in paragraph 79 of the statement they state that "...requirements a), d), e) and f) have now been waived...". A varied requirement d) would refer only to 'ancillary structures' and as these are not clearly defined it is reasonable to accept that the requirement is wholly, rather than partially, waived. The enforcement notice is therefore corrected by the deletion of requirement d), in addition to the deletion of requirements a), e), and f).

Procedural matters

6. The alleged breach of planning control set out in the enforcement notice has five elements but these are not separately identified by any notation. They have been, in the interests of clarity, for the purposes of this Decision.
7. The Appellant's Agents has referred, under ground (b), to element b) of the breach of planning control and, in this regard, they argue that the alleged breach, the construction of a building in use as a retail showroom, has not occurred, because the building is permitted under planning permission 2011/18774. They accept that a change of use of the building has occurred but, given the permission for the building, maintain that the requirement to remove the building is excessive. This is also a matter for consideration under ground (f). They also maintain,

however, that the notice is flawed as the allegation is wrong and that it cannot be corrected without injustice to the Appellant.

8. Planning permission 2011/18774 is for 'development associated with horticultural use (...and erection of tractor store/workshop)' and condition 3 of the permission states that 'The buildings hereby permitted shall be used solely for purposes incidental to the use of the site for horticulture/agriculture, and....If they cease to be used for such purposes, they shall be removed from the site within 3 calendar months'. The building that was constructed as a tractor store/workshop under the permission, and is now in use as a retail showroom with associated storage, is no longer used for purposes incidental to the use of the site for horticulture/agriculture and is therefore in breach of condition 3. This factor notwithstanding, and with regard to element b) of the breach of planning control, a building has been constructed and is in use as a retail showroom. The breach of planning control is not therefore wrong and the notice is not flawed.

9. A ground (d) appeal made in relation to matters that are the subjects of deleted requirements was withdrawn at appeal statement stage and in that statement, in relation to 'other ancillary structures' mentioned in element b) of the breach of planning control, it was "...concluded that a ground (d) appeal cannot be submitted to justify these structures...". No ground (d) appeal is therefore being pursued and no ground (d) appeal shall be considered in this Decision.

10. Element c) of the breach of planning control relates to the construction of a cabin building, which the Appellant's Agent maintains is a stable building. Irrespective of its use the requirement to remove the building has been deleted. On this basis the Agent has suggested that the ground (a) appeal in relation to this building must succeed and that planning permission can be granted for the building. However, in circumstances such as this where the notice does not require the removal of a building that is in breach of planning control, Section 173(11) of the Act provides that planning permission shall be treated as having been granted by virtue of Section 73A. No express grant of planning permission for the cabin or stable building is therefore required.

11. The ground (a) appeal relates to element b) of the breach of planning control, the ground (b) appeal relates to elements b) and e), the ground (c) appeal relates to elements d) and e), the ground (f) appeal relates to elements b), d) and e), and the ground (g) appeals relate, principally, to requirement c) of the notice.

Reasons

The ground (b) appeal

12. As noted above in paragraph 7 the building that is the subject of element b) of the breach of planning control has been constructed on the land and is in use as a retail showroom with associated storage. Irrespective of the planning permission for the building and the effect of condition 3 of the permission the breach of planning control has occurred, as a matter of fact. The ground (b) appeal thus fails in respect to element b) of the breach of planning control.

13. Element e) of the alleged breach of planning control has two sub-elements; 'the storage of scrap metal and metal shipping containers' and 'the use of the land for scrap metal business purposes'. But the Council clearly regards the 'storage' sub-element to be associated with, or ancillary to, the 'use' sub-element; they consider the element in their appeal statement to be a 'scrap metal business' and

have concluded that "...the alleged matters in respect of the operation of a scrap metal business have occurred".

14. In relation to element e) the refusal of a scrap metal dealer's license in September 2016 is not relevant and a report of cable burning allegedly associated with scrap metal business activity in the same month is wholly inconclusive. The only documentary evidence provided by the Council is the minutes of a Parish Council meeting that states, with regard to Caddicks Nursery, that "...it is believed that a scrap metal business is being run from the site". Again, in the absence of any supporting photographs or other evidence, this is wholly inconclusive.

15. The fact that metal shipping containers containing scrap metal were on the site on the date of issue of the enforcement notice is no indication, in the absence of any supporting evidence, that a scrap metal business was being operated from the site. Element e) of the alleged breach of planning control, as a matter of fact, has not occurred. The ground (b) appeal succeeds in this regard and the enforcement notice has been varied by the deletion of element e) of the breach of planning control and, because they relate directly to this element, by the deletion of requirements i), j) and k). The ground (c) and (f) appeals in relation to element e) do not therefore need to be considered.

The ground (c) appeal

16. The ground (c) appeal relates to element d) of the alleged breach of planning control; the storage of skips and the use of the land for skip hire and storage business purposes. Caddicks Nursery was flooded, like many other properties in the area, in December 2015. The clean-up operation following the flooding will have been extensive and time consuming. On the evidence available it is likely that the operation is ongoing and it is reasonable that skips on the land that are genuinely in place in association with the clean-up operations are not related to the skip hire and storage business that is the subject of element d).

17. The Appellant's Agent claims that "...there is no evidence that a skip hire business operates from the site...". This may now be the case but the Council has submitted evidence that indicates that a skip hire business has operated from the site. A flyer headed 'www.easyskips.co' advertises a skip delivery and collection service operation from Caddicks Nursery and a search of Company House records indicates that 'Easy Skip Hire UK Ltd' is a private limited company that was incorporated on 9 November 2015 with a registered office address of Alan Caddicks, Lymm Road, Thelwall, Warrington. The evidence submitted by the Council is clear and unambiguous and indicates that a skip hire business has operated from the site, and it is thus reasonable to conclude that the business was in operation on the date of issue of the enforcement notice.

18. Element d) of the breach of planning control is not permitted development and planning permission has not been granted for such a use of the land. Element d) is therefore a breach of planning control and the ground (c) appeal thus fails.

The ground (a) appeal

19. The building that is the subject of element b) of the breach of planning control was constructed pursuant to planning permission 2011/18774 as a tractor store/workshop in association with the horticultural/agricultural use of land at Caddicks Nursery. Condition 3 of the permission requires the removal of the building, within three months, if its horticultural/agricultural use ceases. This use

of the building ceased when, if not before, the building was first leased to Hale Carpets and Flooring in February 2016. A Breach of Condition Notice (BCN) was issued on the same day as the enforcement notice and requires the removal of a wooden cabin building built pursuant to the planning permission. No BCN has been issued requiring removal of the ground (a) appeal building. No application has been made to the Council for removal of condition 3 and no power exists under the provisions of the Act to remove the condition in this Decision.

20. It is the Council's position that, in essence, given condition 3 and the cessation of its permitted horticultural/agricultural use, that the building is unlawful and that the breach of planning control is thus the construction of a building for its current use as a retail showroom. It is the Appellant's position that the current use of the building is a change of use from its permitted use.

21. Condition 3 of planning permission 2011/18774 is plain on its face and the Appellant's Agent has made no claim that it is *ultra vires* and thus invalid. The reason for the condition given in the decision notice refers to the preservation of the character of the Green Belt, within which Caddicks Nursery is located, and to the buildings having only been allowed because of the applicant's need in connection with the use/operation of the site for horticulture. The reason also states that "New buildings in the Green Belt would not otherwise be acceptable and are only acceptable where that need continues to exist". There is no reference to any re-use of the building in the reason given for the condition, which is clear and justifies a conclusion that the condition is necessary and otherwise meets the six tests for conditions set out in the National Planning Practice Guidance.

22. Once the permitted horticultural use of the appeal building ceased the building did not comply with condition 3 and ceased to have a lawful use. The building can only be considered to be a lawful building if condition 3 is removed or if planning permission is granted, on its merits, for retention of the building for another use. The current use of the building cannot be considered, as maintained by the Appellant's Agent, to be a change of use, or re-use, of the building.

The main issues in the ground (a) appeal

23. The main issues in the ground (a) appeal are; first, whether the building in use as a carpet showroom is inappropriate development; second, whether the building causes any other harm; and third, whether the harm caused by reason of inappropriateness and any other harm is clearly outweighed by other considerations such that very special circumstances exist.

The first issue – inappropriate development

24. National policy on Green Belts is set out in the National Planning Policy Framework (NPPF). Paragraph 89 of the NPPF states that the construction of new buildings is inappropriate development other than for stated exceptions. The construction of a building for use as a retail showroom does not fall within any of the exceptions. The breach of planning control, the construction of a building in use as a retail showroom and ancillary parking area, is therefore inappropriate development in the Green Belt.

The second issue – other harm

25. Paragraph 49 of the NPPF states that an essential characteristic of Green Belts is their openness. The appeal building clearly undermines the openness of the Green Belt and, with regard to the five purposes of Green Belt set out in

paragraph 50, has resulted in encroachment into the countryside by development that does not, for its use as a retail showroom, require a countryside location. In this regard, a retail carpet and flooring showroom is a use that is normally found in a town centre or in a retail park situation within an urban area. Paragraph 28 in Section 3 of the NPPF, 'Supporting a prosperous rural economy', requires development plans to promote the development and diversification of agricultural and other land-based rural businesses. A retail showroom with associated storage is not, or is associated with, a land-based rural business.

26. The appeal building causes harm by loss of openness and through encroachment into the countryside, and conflicts with national policy that seeks to support the vitality of town centres and the rural economy. The appeal building also conflicts with policies CS5 and CC2 of the Warrington Local Plan Core Strategy.

27. The limited vehicular traffic associated with the use of the appeal building is not likely to result in any traffic congestion or adverse consequences for highway safety. Given the appeal building's location relative to residential properties the use of the building is not likely to have any significant impact on amenity.

The third issue – other considerations

28. 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".

29. The damage caused to the appeal site by flooding in December 2015 is well documented. The Appellant claims that the consequences of the flooding has exacerbated his financial difficulties and has compromised his attempts to re-establish the nursery business at Caddicks Nursery. Whilst the flooding was a major event that has affected the use of the land, and will have resulted in a significant clear up operation, there is no evidence to indicate the degree to which it has contributed to the Appellant's financial difficulties. Furthermore, whilst the flooding will have set back his efforts to re-establish the nursery business there was no evidence on site at the site visit, and there is no documentary evidence, to demonstrate that work has commenced on re-establishment of the business.

30. The removal of the appeal building would result in the loss of a source of income for the Appellant and he claims that this would affect his ability to clean-up the site and to re-establish the business, resulting in a worse long-term outcome for the Green Belt and for the site. In this regard he maintains that this consequence would be contrary to paragraph 81 of the NPPF and that this "...can in itself comprise very special circumstances". But paragraph 81 requires local planning authorities to plan positively to enhance the beneficial use of the Green Belt and this cannot include allowing development that is, in itself, harmful to the Green Belt. To do so would undermine, as expressed in paragraph 79, the great importance that is attached by the Government to Green Belts.

31. None of the aforementioned considerations, either individually or collectively, clearly outweigh the harm caused by reason of inappropriateness and the other harm identified above. Very special circumstances therefore do not exist.

Conclusion on the ground (a) appeal

32. The breach of planning control is inappropriate development, has caused harm by loss of openness, has resulted in encroachment into the countryside, and very special circumstances do not exist. The ground (a) appeal thus fails.

The ground (f) appeal

33. Corrections and variations of the enforcement notice have resulted in the deletion of requirements a), d), e), f), i), j) and k). Requirements b) and c) relate to the appeal building, and requirements g) and h) relate to the storage of skips and the use of the land for skip hire and storage business purposes. Requirements g) and h), with regard to skips on the land specifically related to element d) of the breach of planning control and not related to any clear-up operations, are not excessive.

34. The cessation of the unauthorised use of the appeal building, requirement b), is not contested by the Appellant. He does, however, claim that requirement c) is excessive because the appeal building benefits from an implemented planning permission and that, therefore, the requirement should be varied to require that the building reverts to its lawful use, "...in line with well-established case law". No case law has been brought forward to support this claim and, most importantly, the building, as set out in paragraphs 18-21 above, does not have a lawful use because the use for which it was constructed has ceased. The requirement cannot therefore be varied as suggested by the Appellant.

35. Condition 3 of the planning permission requires the removal of the building if the permitted use ceases. Requirement c), notwithstanding conformation with condition 3, is not excessive. The ground (f) appeal thus fails.

The ground (g) appeals

36. The Council has accepted that the period for compliance with the requirements of the notice may be varied to afford the showroom business operator additional time to find and move to alternative premises and therefore for compliance with requirement b). They have agreed to a compliance period of twelve months, from the date of issue of the notice rather than from the date the notice comes into effect, which will be the date of this decision. But the business operator, one of the Appellants in the ground (g) appeals, is entitled to await the outcome of the appeal before, if necessary, commencing his search for alternative premises. There is therefore no justification for the compliance period commencing on the date of issue of the notice.

37. The aforementioned Appellant suggested that the compliance period should be twelve months for compliance with requirement b) plus 90 days for compliance with requirement c). This is an excessive period given that breaches of planning control should be remedied as soon as is reasonably possible. An overall compliance period of twelve months, from the date the notice comes into effect, strikes a balance between this principle and the need to afford sufficient time for alternative premises to be found.

38. The ground (g) appeals thus succeed and the enforcement notice has been varied to include a compliance period of twelve months.

John Braithwaite

Inspector