



Appeal Decision

Hearing held on 5 June 2019 and a site visit on the same day

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/T2215/C/18/3204555

Land at Hawley Garden Centre, Hawley Road, Hawley, Kent DA2 7RB

- 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 M Brooker against an enforcement notice issued by Dartford Borough Council.
 - The enforcement notice was issued on 10 May 2018.
 - The breach of planning control as alleged in the notice is described as "Carrying out a development in the form of the change of use of the land marked in blue to a scaffold yard and the erection of structures for storing scaffolding without the benefit of planning permission".
 - The requirements of the notice are set out as "a) Cease the use of the land (coloured in blue) as a scaffold yard; b) Remove from the land all storage structures and associated fixtures, all materials and services, hardstanding and all other items associated with the scaffolding use. C) restore the land to its condition before the structures were erected. D) Remove all resulting materials and debris from the land."
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the insertion of the word "material" prior to the word "change" in paragraph 3 of the notice, and varied by the deletion of paragraphs 5(b) and (c) and the substitution with "Remove from the land the shipping container, all materials, plant and equipment and scaffold racks associated with the use and restore the land to its condition before the material change of use took place"; and the deletion of three months and the substitution of nine months as the period of compliance. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. The appellant raised additional grounds of appeal, namely grounds (c) and (d), in his Final Comments statement in response to the Council's Statement of Case (SoC). However, the Council had not been given an opportunity of responding to these grounds in the appeal process. To proceed without a formal response would lead to injustice for the Council. A short adjournment was given to enable discussion between the parties, at the end of which the appellant decided to withdraw the additional grounds of appeal. The appeal is therefore proceeding on grounds (a), (f) and (g) only.

3. During the Hearing it became apparent that the appellant had revised his SoC and that the parties were referring to the April 2019 version as opposed to the May 2018 version, which accompanied the appeal form. The Council had received a copy of the April SoC and had made Final Comments on it but it had been omitted from my bundle. After having received a copy, the Hearing was adjourned to allow time for me to read it and then the Hearing was reconvened as I found that the later SoC introduced no fundamental changes to the case already made.

The Notice

4. It is clear that the description of the development in the enforcement notice is incorrect in that the allegation does not allege that there has been a material change of use. It is open to me to correct the allegation to put the notice in order but this can only be done provided there is no injustice to either party. I consider this can be achieved as it is clear from the appellant's appeal submissions that he has not been misled by the incorrect framing of the allegation.
5. In addition, the allegation refers to operational development but at the Hearing it was apparent that the structures erected by the appellant facilitated the material change of use of the land to a scaffolder's yard. As such, the ten year period set out in the notice is the correct period of immunity, not four years as discussed at the Hearing.
6. I will therefore direct that the allegation is corrected in order to set the terms of the deemed planning application for planning permission. The allegation is thus, without planning permission, the material change of use of the land, marked in blue on the plan attached to the notice, to a scaffold yard and the erection of structures for storing scaffolding to facilitate that use. The appeal will proceed on this basis.

The ground (a) appeal and the deemed planning application

Main Issues

7. The appeal site is within the Green Belt (GB) and therefore the main issues are:
 - Whether the development represents inappropriate development in the GB for the purposes of the National Planning Policy Framework (the Framework) and development plan policy; and the effect of the development on the openness of the GB;
 - The effect of the development on the character and appearance of the area; and
 - If the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Inappropriate development and openness

8. The appeal site comprises an approximately rectangular piece of land that is between 0.12 and 0.18ha in area situated within Hawley Garden Centre. This business is located in the village of Hawley and is bounded by fields to the north and west. Within the garden centre there are various zones and the appeal site lies more or less adjacent to the southern boundary to the west of the main area of business which is centred on retail buildings, show areas and the car park. Directly to the south of the appeal site is a public right of way (PROW) and the M25 motorway; and to the west and north west is a vacant parcel of land recently cleared of an unauthorised builders' yard use, a reindeer paddock and various sheds used for potting, storage and other nursery uses. The main part of the garden centre open to the public lies to the north east and east of the appeal site, where the owner's house is also situated.
9. The appellant began leasing and using the site as a scaffold yard in 2012. The location was previously used by the owner of the garden centre as an area to store and sell aggregates¹. It appears that the owner laid a hard standing and erected breeze block bays to access and store the aggregates. The appellant has erected substantial racks with low level strip lighting to store his scaffolding poles and boards. These are approximately 5m high with a roof made from metal profile sheeting and comprise two main blocks to form an enclosed yard area, one is sited adjacent to the northern boundary of the yard and a larger one is positioned against the southern boundary. Access is taken from the garden centre car park and leads into the yard where the five trucks that deliver and collect the scaffolding are stored overnight. The perimeter of the site is denoted by mesh fencing covered in blue netting.
10. The development attacked by the notice is the material change of use of the land. The erection of the racks facilitate that use and are not a stand-alone development. The Framework sets out what is inappropriate and not inappropriate development in paragraphs 145 and 146. Development that is not inappropriate includes material changes in the use of land provided it preserves the openness of the GB and does not conflict with the purposes of including land within it. Policy CS 13 of the Council's Core Strategy (CS²) and Policy DP22 of the Council's Development Policies Plan (DPP³) accord with national policy on GBs in that they seek to resist inappropriate development. In addition, Policy DP22 states that not inappropriate development will be supported provided it conserves the GB as a recreational, ecological and agricultural resource and Policy CS 13 states that agricultural land uses within the GB will be protected.
11. It is therefore necessary to consider the effect of the development on preserving the openness of the GB and the purposes of including land in the GB before a finding can be made on whether the development is not inappropriate.
12. Openness is an essential characteristic of the GB. The construction of the substantial racks, of which one envelops the breeze block storage bays left on the land, together with the siting of a shipping container within the yard, result in a reduction in the openness of the GB. The racks and shipping container are significant additions in size and volume and are visible either in full or in part from Hawley Road, Shire Hall Road and the PROW. The openness of the GB is therefore reduced and this harms the GB.

¹ Sand, gravel, top soil and compost

² Dartford Core Strategy Adopted September 2011

³ Dartford Development Policies Plan Adopted 2017

13. Paragraph 134 of the Framework sets out the five main purposes of including land in the GB. Whilst the development has had no effect on the unrestricted sprawl of a large built-up area, the merging of neighbouring towns, the setting of historic towns or urban regeneration, it is my view that it has resulted in encroachment into the countryside. The appellant accepts that this has happened but submits that the harm is limited. Nevertheless, encroachment has occurred.
14. The appellant also relies on paragraphs 145 (e) and (g) of the Framework and submits that the appeal site is previously developed land (PDL) and the development of it is therefore not inappropriate; furthermore, it can also be considered as an infill development. His view is that as the site was previously used by the owner of the garden centre for the sale and storage of aggregates on a hard-surfaced yard with storage bays built from breeze blocks, it was therefore PDL. He also states the structures are temporary. Whether this means, in his view, they are not buildings or whether it just means they can easily be taken down is not elaborated.
15. However, paragraph 145 deals with new buildings. It lists, as exceptions, particular types of new buildings as being not inappropriate development in the GB. The allegation in the notice though is a material change of use of land, which includes operational development that facilitates that use. As such, the allegation falls to be considered under paragraph 146, which contains a list of other development that is not inappropriate development in the GB, including material changes in the use of land.
16. I find that the openness of the GB is not preserved and the development encroaches into the countryside and thus conflicts with one of the reasons for including land in the GB. The material change of use, and the operational development that facilitates it, is therefore inappropriate development in the GB. This is harmful by definition.

Character and appearance

17. Although the site abuts a commercial use, it is separated from it by a long line of mature trees that mark the route of the PROW before it was diverted along the southern boundary. The site is on slightly higher ground than the main part of the garden centre, adjacent to the motorway embankment, which is well planted with trees. Land to the north and west is in horticultural or agricultural use and as such the surrounding area is rural in character.
18. The use can be seen in whole or in part from the surrounding area. The racks have a utilitarian and incongruous appearance and Council photographs show that the lorries are not always parked in the yard but adjacent to the yard in the field, outwith the area identified in the notice. This means that the use encroaches further into the countryside than if it had been contained within the yard area. The height of the racks coupled with their position on higher ground means that they are unacceptably prominent in views from Hawley Road through the trees that mark the line of the former PROW. The development is also visible from dwellings along Shire Hall Road that overlook the field separating the garden centre from the main part of the village. The racks are also seen against the trees lining the M25 embankment through gaps in the hedge on Shire Hall Road.

19. During the site visit I walked the PROW from where it emerges on Shire Hall Road to where it emerges on Hawley Road. The development is seen in whole or in part from the path especially as it descends across the field from Shire Hall Road, looking towards the M25. The blue netting has little effect on screening the site. The PROW also crosses the motorway by a footbridge which provides another view of the site. In addition, there is a close-up view of the site from the PROW on the southern boundary, where some of the metal sheeting oversails the path.
20. The appellant submits that the development is seen in the context of a large garden centre, which has a number of buildings. However, these buildings are mainly in one grouping and those that are not, are situated in a dip in the land which obscures distant views of them. The scaffold yard though, is more visible being on higher ground and separated from the garden centre by the tree line that marks the old route of the PROW.
21. The Council also pointed out that the illumination from the strip lights in the yard was intrusive, harming the rural character. However, atop the embankment there are street lights that illuminate the motorway, it is therefore my view that the illumination at the yard, whilst noticeable for short periods during loading/unloading times in autumn and winter, causes limited harm. This aspect of the development therefore accords with Policy DP5 of the DPP which requires amongst other matters that development will only be permitted where it does not result in unacceptable material impacts.
22. The appellant also submits that the number of people who use the PROW are few, between 13 and 21 people a day; these are mainly dog walkers and school children. The views from it of the development should therefore be given little weight. Conditions could be imposed requiring that the racks be lowered in height, re-positioned and the screening netting could be a different colour. However, even if there was no PROW, the development is clearly visible from other areas of the public domain regardless of the height or position of the racks. As such, it is my conclusion that the development erodes the rural character of the area.
23. As I find harm to the character and appearance of the area, the development is not in accordance with Policy DP2 of the DPP, which requires amongst other matters that development should respond to the positive aspects of the locality.

Other considerations

24. The appellant has put forward other considerations, namely that this site is in a very busy part of the GB between the A225 and the M25. It is therefore not a site in open countryside, detached from anywhere else. Rather than justifying the development, I find that this is an argument that underlines the importance of protecting the openness of GBs between settlements and encroaching into the corners of the GB, as this development does, diminishes its value.
25. He also submits that the Framework, at paragraph 84, recognises that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements. However, paragraph 81 of the Framework sets out that planning policies should be flexible enough to accommodate needs not anticipated in the plan and this is acknowledged by the Council, who have

adopted Policy DP20 in the DPP. This permits *sui generis* uses in identified employment areas, subject to various criteria.

26. Essentially the appellant has struggled to find an alternative site especially when the basic requirement is for a small open site 0.2ha in size. Purpose-built buildings on business parks and trading estates do not suit the appellant's needs. Often the land available to lease is too large at one acre and therefore too expensive.
27. The business employs 20 people, who all live within a reasonable distance of the yard. It is well established over a number of years and in that time, it has had to leave its previous two London sites due to the increasing value of brownfield land for redevelopment. The appellant views this as somewhat ironic as scaffolders are needed to maintain the growth in the economy.
28. The Council have signposted the appellant to the protected employment sites in the DPP but it seems none of these are suitable. This is because some are adjacent to residential areas, where early morning starts might disturb the neighbours and some are in science parks, which makes them unaffordable. Some small businesses are based in the GB but no sites are available.
29. The appellant's submissions on this point merit significant weight especially due to the number of people employed, which makes it a medium size enterprise. Paragraph 80 of the Framework sets out that significant weight should be placed on the need to support economic growth, taking into account local business needs. I find that the appellant's business plays a vital role in supporting that objective but the commercial difficulties in finding an alternative site can also be easily repeated, to the detriment of the GB.

Conclusion on the main issues

30. In conclusion, the development is inappropriate development in the GB. Substantial weight has to be attached to any harm to the GB and for the reasons given, the development results in a significant loss of openness and harm to the character and appearance of the area. Even when taken together, the other considerations viewed above do not clearly outweigh these objections. Consequently, no very special circumstances exist and the development is contrary to the Council's policies. Therefore, for the reasons given I conclude that the development on ground (a) should fail.

The ground (f) appeal

31. The appeal on ground (f) is that the requirements of the notice exceeds what is necessary to achieve the purpose. The purposes of a notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the use of the land should cease and the structures should be removed. The purpose of the notice is therefore to remedy the breach of planning control.
32. By appealing on this ground, the appellant submits that the requirements are excessive. In particular, he submits that it is unreasonable to require the removal of the hard standing and storage bays, as they were constructed to access and contain the aggregates.

33. Google Earth images submitted by the Council show that the aggregate bays existed prior to the scaffold yard use beginning. Whilst the Council submit that the appellant makes use of the hardstanding and the bays, that use is incidental and the works were carried out for another purpose. It is therefore unreasonable to require that they be removed. The appeal on ground (f) therefore succeeds and I will vary the requirements to specify instead that the land be restored to its condition before the development took place.

The ground (g) appeal

34. This ground of appeal is that the time period given to comply with the requirements of the notice is too short and the appellant submits that he needs 12 months. This is because there are difficulties in finding an alternative site and if a site is found, he will need to apply for planning permission. Time would also be required to fund the move as relocating the business would result in a huge cost as there would be a loss of work while moving to another site.
35. In cases involving business uses it is necessary to weigh the interest of the business against the harm caused by the use the subject of the notice. On the one hand, the appellant has calculated that he would need a year to plan for and organise the relocation without detriment to his business. On the other, the notice includes a number of reasons setting out the harm caused by the development. These include, amongst other matters, that the site is within the GB, which enjoys a high level of protection from unacceptable development. I consider a year would be tantamount to a grant of temporary planning permission but nine months would be a reasonable period to enable the appellant to comply with the notice and would strike the appropriate balance. To this limited extent the appeal on ground (g) succeeds.

Conclusion

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

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Nicholls BA Hons DipTP MRTPI	Agent, Graham Simpkin Planning
Mr R Hunt	Appellant, Partner, BVL Scaffolding LTD
Ms J East	Land owner

FOR THE LOCAL PLANNING AUTHORITY:

Ms E Eisinger BA MA MRTPI	Principal Planner
Ms C Walker	Head of Enforcement