
Appeal Decision

Site visit made on 3 September 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/J1915/C/18/3209857

Land at Redricks Lane, Sawbridgeworth, Herts CM21 0RL

- 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 Mitchell Edwards against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 26 July 2018.
- The breach of planning control as alleged in the notice is the use of the land as a motor cross track and the formation of jumps/ramps.
- The requirements of the notice are to cease the use of the land and remove the formed jumps/ramps.
- The period for compliance with the requirements is:
 1. Cease the use of the land within 1 month.
 2. Remove the jumps/ramps from the site within 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

1. Since the Council served the enforcement notice it has adopted the East Herts District Plan October 2018. Therefore in determining the appeal before me I have had regard to that development plan document. The East Herts Local Plan Second Review (2007) is no longer part of the development plan.

The appeal on ground (b)

2. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. In order to succeed on this ground it would need to be demonstrated that the use of the land as a motor cross track and the formation of jumps/ramps has not happened as a matter of fact.
3. The appellant states that the breach alleged in the enforcement notice has not occurred on all of the land shown edged red on the plan attached to the Notice. Whilst that may not be the case, it is clear to me that the alleged breach of planning control has occurred as a matter of fact. The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 requires the notice to specify the precise boundaries of land by reference to a plan or otherwise. A seriously incorrect plan does not make the notice a nullity nor does it guarantee success on ground (b); however, it would constitute a breach if the notice does not otherwise specify the boundaries of the land to which it relates.

4. In this case the enforcement notice clearly specifies the land to which it relates both in the text of the Notice and also the attached plan. Furthermore, the remainder of the appellant's evidence indicates that the breach has occurred. As such the appeal on ground (b) fails.

The appeal on ground (a)

5. The ground of appeal is that planning permission should be granted. The main issues are:
 - i. Whether the development is inappropriate development in the Green Belt;
 - ii. The effect on the openness of the Green Belt and the purposes of including the land within it;
 - iii. If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Inappropriate development

6. Paragraph 146 of the National Planning Policy Framework (the Framework) states that certain forms of development are not inappropriate development provided they preserve its openness and do not conflict with the purposes of including land within it. The change of use of the land as a motor cross track is a material change in the use of the land and the formation of jumps and ramps is an engineering operation. My conclusions on the next issue, their effect on the openness of the Green Belt and its purposes, will therefore determine whether or not the development is inappropriate.
7. It is my understanding that the site is a former landfill site and is undulating and partly overgrown with scrub and trees with large areas of grass and a gravel and earth motor cross track. There are hedge boundaries around parts of the site. A series of embankments and earthwork features have been formed across the site as jumps and ramps for the motor cross track.

Green Belt Openness and Purposes

8. The use of the land itself does not lead to any material loss of Green Belt openness but would in my mind affect the purposes of including land in the Green Belt, including safeguarding the countryside from encroachment. The jumps and ramps have required engineering operations to remould the land. Consequently, there are various unnatural undulations in the land, some of which are particularly large and prominent in the immediate surroundings. Therefore, the jumps and ramps would not preserve the openness of the Green Belt and would impact on the purpose of the Green Belt relating to safeguarding the countryside from encroachment. Whilst the effects would be moderate, on the basis that the fundamental aim of Green Belt policy, as set out in paragraph 133 of the Framework, is to keep land permanently open, they would be sufficient to result in the development being inappropriate in the Green Belt. Policy GBR1 of the East Herts District Plan October 2018 states that planning applications in the Green Belt will be considered in line with the provisions of the Framework.

Other Considerations

9. The appellant states that the business employs one full time member of staff plus marshals on the days it is open. The appellant has also set out the social, economic and environmental benefits he considers would result from the development. In particular, attention has been drawn to the provision of a sport or recreational facility, but there is insufficient evidence before me to determine whether there is a clear demand, locally. It is also stated that there are economic benefits and environmental benefits by bringing the land into sporting use.
10. The appellant's statement indicates that a number of additional reports and evidence were to be submitted, including a landscaping and biodiversity plan, landscape character and visual assessment, noise assessment, air quality assessment, contaminated land report and flood risk assessment and drainage plan and water management. I have no evidence that they have been provided. In any case it seems to me that these are largely technical matters and would not in any case go to the heart of the main issues in this case relating to whether the principle of the development is acceptable in the Green Belt.
11. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in exceptional circumstances. Although in this case the effects on openness and the Green Belt purpose of safeguarding the countryside from encroachment would be relatively moderate, substantial weight should still be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
12. I give limited weight to the previous use of the site. I also only attach moderate weight to the arguments put forward by the appellant with respect to the social, economic and environmental benefits of the development which seem to me to be fairly limited. The substantial weight to be given to the Green Belt harm is clearly not outweighed by other considerations sufficient to demonstrate very special circumstances.
13. For the reasons given above the appeal on ground (a) fails.

The appeal on ground (f)

14. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s174(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the use to cease and for the jumps and ramps to be removed, the purpose is clearly to remedy the breach.
15. The appellant contends that the openness of the Green Belt could be mitigated by the removal or reduction of the jumps and obstacles. He also points out that the steps required are excessive to remedy the breach since the enforcement notice plan relates to an area of land larger than the motor cross track. However, given the requirements of the notice and the overall purpose to remedy the breach lesser steps would not overcome the harm identified. Therefore the appeal on ground (f) fails.

Formal decision

16. The appeal is dismissed 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.

AA Phillips

INSPECTOR