
Appeal Decisions

Site visit made on 24 September 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal A Ref: APP/H2265/C/18/3219229

Appeal B Ref: APP/H2265/C/18/3219230

**Stables at Leybourne Park Farm, Park Road, Leybourne, West Malling
ME19 5HP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Suzanne Lingham and Appeal B by Mr Tim Lingham against an enforcement notice issued by Tonbridge & Malling Borough Council.
- The enforcement notice was issued on 7 December 2018.
- The breach of planning control as alleged in the notice is *without the benefit of planning permission, an engineering operation to create a hardstanding, vehicle Turing area and soakaways and earth bunds*.
- The requirements of the notice are *to remove all unauthorised engineering operations in the form of hardstandings, vehicle turning areas, soakaways and earth bunds as shown on TMBC2 and restore the land to its previous condition*.
- The period for compliance with the requirements is *six calendar months from the date the Notice takes effect*.
- Appeal A is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. The breach of planning control alleged contains a typographical error in referring to Turing instead of turning. It is clear what is intended in the description of the breach, so no party would be substantially prejudiced by correcting this error.
2. I noted on site that the development contained within the breach is not yet complete as a number of the concrete sleepers used to form the hardstanding have not yet been laid. In determining the appeal, I need to consider the development as it existed at the time the notice was issued.

The Appeal on Ground (a) and the Deemed Planning Application

Background and Main issues

3. I note that planning permission for the works was refused (reference TM/18/02105/FL) and included a reason relating to the effect of the

hardstanding, bund and soakaway on the setting of the Grade II* listed building, Leybourne Castle. However, that was not referred to in the reasons for issuing the enforcement notice. Consequently, I will not consider it under the main issues but will return to it in other considerations.

4. The main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- Whether there are other considerations weighing in favour of the proposal; and
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

5. The Framework seeks to protect the Green Belt from inappropriate development and states that substantial weight should be given to any harm to the Green Belt. Policy CP3 of the Tonbridge and Malling Core Strategy (CS) states that national Green Belt policy will apply. The Framework states that new buildings within the Green Belt should be considered inappropriate with a number of exceptions. I have been referred to a number of exceptions including those relating to buildings for agriculture and the provision of appropriate facilities for outdoor sport and recreation. However, the development comprises hardstanding, turning area, soakaway and earth bund, none of which comprise buildings.
6. Other forms of development are also not inappropriate provided that they preserve its openness and do not conflict with the purposes of including land within it. This includes engineering operations, such as the form of development subject of this appeal.
7. The land at Leybourne Park Farm comprises paddocks and buildings that are used as a livery yard, providing accommodation, grazing and exercise land for horses. Adjacent to the parking area and with access from it is an open sided pole barn behind which was an area that sloped up away from the barn. This has been excavated and a hardstanding formed, comprised of concrete sleepers, at approximately the level of the floor of the barn. An earth bund has been constructed to the opposite side from the barn.
8. The hardstanding is located in the middle of the farm and adjacent to the rear of the barn in views from Park Road. However, there is a public footpath to the south from which the bund is visible in the foreground of the barn. It is intended to plant with wildflowers that would soften its appearance. Whilst it is not prominent it, nevertheless, has some impact on the openness of the Green Belt in this location. As the hardstanding is excavated into the ground, this is not visible from any public vantage points. Neither is the soakaway evident in views from the surrounding area.

9. However, the visual impact of the development is only one factor. I understand that the hardstanding provides vehicular access to the building. Vehicles coming and going over the hardstanding would have some effect on openness. Reference has been made to outside storage on the hardstanding, such as the bales, wooden pallets and equipment visible at the time of my visit and in photographs. Outside storage would have a greater effect on openness, even if largely hidden from view by the topography and surrounding bund.
10. In addition to the hardstanding and bund, a soakaway has been provided to accommodate run off. Of itself, the soakaway has no material effect on the openness of the Green Belt. Nevertheless, it forms part of the overall development and should be considered in that context.
11. For these reasons, I conclude that the hardstanding, bund and soakaway harm the openness of the Green Belt. As such, they constitute inappropriate development within the Green Belt that conflicts with Policy CP3 of the CS and the Framework.

Other considerations

12. It has been suggested that the hardstanding makes effective use of land. It has limited visual impact that does not cause material harm to the character and appearance of the surrounding rural area. It provides access and turning adjacent to the barn, replacing a muddy track on which surface water collected, and reduces rutting of the ground and removal of mud from this area onto surrounding roads. This provides limited benefits in favour of the development.
13. The location of the hardstanding restricts the conflict between vehicles servicing the livery accessing the building and people, including children, within the car park to the opposite side of the building. I consider that would carry moderate weight in support of the proposed development.
14. I note that rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 would permit agricultural tracks and hardstanding in certain circumstances. However, the hardstanding in this case serves the equestrian use of the land, such that it would not form a realistic fallback position in this case. As a result, it would be a circumstance of little weight.
15. The hardstanding, bund and soakaway are located across open paddocks from the Grade II* listed building, Leybourne Castle. The views across the adjacent fields allow the significance of the building to be appreciated from the surrounding landscape. Nevertheless, the distance between the listed building and the works means that there is some separation between them. The works reflect the use of the surrounding land in equestrian uses with the hardstanding disguised by the bund and seen in views from the listed building against the backdrop of the adjacent barn. Consequently, the combination of that separation and nature of the works means that they do not harm the setting of the listed building.

Conclusion

16. I have found that the hardstanding, bund and soakaway comprise engineering operations that harm the openness of the Green Belt and, as such, the proposal is inappropriate development. I have not identified any other harm. The development provides a turning area and access to the adjacent barn such

as to reduce rutting of the ground, making efficient use of the land in an area that reduces conflict between vehicles servicing the livery and others. However, these matters can only attract moderate weight. Similarly, I have attached little weight to the potential for a hardstanding for agricultural purposes that may be permitted development. The development does not harm the setting of the listed building.

17. As such, the substantial weight to be given to Green Belt harm is not clearly outweighed by other considerations, either individually or cumulatively, sufficient to demonstrate very special circumstances. Therefore, the proposed development is contrary to Policy CP3 of the CS and the Framework that seek to protect the Green Belt from inappropriate development.
18. On the basis of the above considerations, I conclude that the appeal under ground (a) should fail.

The Appeals on Ground (f)

19. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to remove the engineering operations comprising the hardstanding, turning areas, soakaway and earth bunds, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
20. The appellants suggest that removal of the soakaway would not be necessary to remedy the harm to the Green Belt. Nevertheless, as set out under ground (a), it is an integral part of the overall development which has not been justified. With regard to this ground (f) appeal, allowing it to remain would not fully remedy the breach of planning control. Hence, the requirement for its removal is not excessive in order to remedy the breach.
21. As a result, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. The appeals on ground (f) therefore fail.

The Appeals on Ground (g)

22. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The notice suggests that six calendar months is sufficient to allow the appellant to carry out the works required in the notice. I see no reason to consider that is not the case.
23. I note that the appellant wants additional time to deal with matters relating to drainage and access to the barn. However, the appeal on ground (a) has been dismissed. The appellant is legally obliged to comply with the requirements of the notice.
24. The appeals on ground (g) therefore fail.

Formal Decision

25. It is directed that the enforcement notice is corrected by replacing the word "Turing" with "turning" in the breach of planning control.
26. Subject to the correction, the appeals are 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.

AJ Steen

INSPECTOR