
Appeal Decisions

Site visit made on 12 November 2019

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Appeal A Ref: APP/G5180/C/19/3230784

Appeal B Ref: APP/G5180/C/19/3230787

Land adjacent to Knockholt Railway Station, South Side, Sevenoaks Road, Halstead, Bromley

- 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 appeals are made by Mr David Searles (Appeal A) and Mr Lee Searles (Appeal B) against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The Council's reference is 18/00158/MCU.
 - The enforcement notice was issued on 7 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land which is situated in the Green Belt, from an agricultural use to use for the storage and stationing of a mobile home for office/residential use, the parking of haulage lorries, storage of containers and building materials on the land edged red.
 - The requirements of the notice are:
 - 1) Cease the unauthorised use of any part of the land for the storage and stationing of a mobile home for office/residential use, the parking of haulage lorries, storage of containers and building materials.
 - 2) Remove all associated materials connected to the above.
 - 3) Leave the land in a neat and tidy condition.
 - 4) Prepare the ground to enable the land to revert back to its former condition as rough grassland.
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) [a], [b], [f] and [g] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is an identical appeal except there is no ground (a).
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Decisions

1. Appeal A and Appeal B are dismissed, and the enforcement notice is upheld with corrections and variations.

Procedural Matters

2. The appellant has drawn my attention to an appeal which has been submitted against a refusal of planning permission for the use of the site for open storage and commercial parking along with gate keepers accommodation (Appeal Reference APP/G5180/W/19/3224369) (the planning appeal). The appeal was dismissed, and the decision was issued on this appeal on 11 June 2019. Although the description of development does not match the matters specified

as the breach of planning control in the notice, the appeal decision is a significant material consideration in this case.

3. The appellants have not submitted their appeals on the basis of ground (d), which is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. However, they have addressed this ground in their submissions, and I have considered it below.

Ground (b)

4. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
5. The appellants argue that the last use of the site is not agricultural land. However, it is not necessary for the notice to state what the material change of use is from and I can correct the notice by removing the reference to the agricultural use. On this basis this element of the ground (b) appeal falls away.
6. The appellants explain that the mobile home has never been occupied for any use and contend that there is no residential use or development on the site. I was unable to access the mobile home during my site visit. However, the Council has provided photographs including those which show unmade beds, pillows and bed linen inside the building. The appellants have not provided any explanation of why the space within the mobile home appeared to have been used for sleeping or to contradict the view that the mobile home has been in residential use.
7. The onus is on the appellants to demonstrate that a residential use has not occurred, and in the face of evidence to the contrary, they have not shown that a residential use of the mobile home has not taken place. However, there is no indication that the mobile home has been used as an office. Whilst the appellants state that this is their intention, they say that the use has not commenced and there is no evidence from the Council regarding a previous or existing office use.
8. In the light of my findings, I propose to vary the notice to remove the reference to the office use of the mobile home from Schedule 3 and Step 1 of Schedule 5 as this use has not been demonstrated.
9. By his own admission the appellant has stated that there was one lorry on the site. Notwithstanding his assurance that large haulage lorries will not be stored on the site in the future, one lorry and some containers and building materials were on the site at the time of my visit. This combined with the photographs provided by the Council, is sufficient to demonstrate that the site has been used for lorry parking and storage of containers and building materials.
10. I conclude that, on the balance of probabilities, the site has been used for the storage and stationing of a mobile home for residential use, the parking of haulage lorries and storage of containers and building materials. which amounts to a change of use for which planning permission is required.
11. For the reasons set out above, subject to the correction and variation of the notice, both appeals fail on ground (b).

Ground (d)

12. The appellants argue that the change of use as described in the notice has not occurred because the existing hardstanding and storage on the site are not recent and that these are proven historic uses of the land.
13. There is no evidence before me to demonstrate that these works, and the associated uses have been present on the site for more than 10 years. The single Statutory Declaration provided by the appellants describes the use of land only until 2000 and it does not refer to the parking of haulage lorries, storage of containers and building materials. Furthermore, the aerial photographs provided by the Council show the site as being covered in grass for at least part of the period between 2006 and 2016 and the accuracy of these has not been questioned by the appellants.
14. The recent planning appeal has been dismissed, consequently planning permission was not granted for use of the site for open storage & commercial parking along with gate keepers accommodation.
15. In the absence of clear and unambiguous evidence to demonstrate that the unauthorised use has been carried on for more than 10 years or that planning permission has been granted for the use/works described on the notice both appeals fail on ground (d).

Ground (a) and the Deemed Planning Application

16. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

17. The main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and having regard to any relevant development plan policies.
 - If the development is inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development/effect on openness

18. The development involves a change of use of the land. Paragraph 146 of the Framework sets out that material changes in the use of land are not inappropriate development in the Green Belt provided that they would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
19. The appellant also considers that the development could be regarded as use of the land for local transport infrastructure. Such uses are also not inappropriate in the Green Belt if they preserve its openness and do not conflict with the

- purposes of including land in the Green Belt with the additional proviso that a requirement for a Green Belt location can be demonstrated.
20. Policy 49 of the London Borough of Bromley Local Plan 2019 (the Local Plan) and Policy 7.16 of the London Plan make it clear that within the Green Belt inappropriate development should be refused unless very special circumstances can be demonstrated that clearly outweigh the harm by reason of inappropriateness or any other harm. These policies are in accordance with the Framework and on this basis, they attract significant weight.
 21. The appeal site is roughly triangular in shape and lies between two roads and a railway line from which it is separated by a site in commercial use. The site is segregated into three parts by fencing of varying heights. The westernmost part of the site is woodland and generally inaccessible on account of dense undergrowth. The central part of the site is substantially open with some small structures close to the edges and it is devoid of vegetation. The easternmost section accommodates a large building in the form of a mobile home which is surrounded by decking and paving.
 22. Openness is one of the essential characteristics of the Green Belt and it has been established that openness has both a spatial and a visual aspect.
 23. Based on the limited evidence before me I have assumed that there were no buildings or structures on the site prior to the change of use. In view of the absence of buildings on the site, the development has led to a loss of openness in spatial terms by virtue of the footprint of occupation, albeit that the mobile home and other buildings only cover part of the site.
 24. There are mature trees on the frontage to Sevenoaks Road which provide some screening to the site. However, these are deciduous trees and during the winter months the screening effect would be reduced. The site is gated but when the gates are open there are views into the site and the difference between the vegetated areas surrounding the site and the harsh environment of the parking and storage areas is stark.
 25. There is no evidence before me to suggest that when the site is used for parking of haulage vehicles, those vehicles would be fully screened from view. I concur with the view of the Inspector who considered the planning appeal, that to restrict the overall number of vehicles could be prohibitive to the business and difficult to enforce. On that basis the vehicle parking, whilst in the case of each vehicle may be transitory, they all individually and cumulatively have an effect on openness.
 26. If I consider the use of the land for local transport infrastructure, then the same harm to openness would be caused and there is no evidence to demonstrate a requirement for a Green Belt location.
 27. The appellant has requested that, as an alternative, permission could be given for continued use of the site as B8 commercial storage. However, even a B8 storage use on its own would still have the potential for a significant impact on the openness of the Green Belt and as a positive case has not been made for such a use, it too would be inappropriate development.
 28. In summary the development has a harmful impact on the openness of the Green Belt in terms of both its spatial and visual dimensions and it follows that the change of use and the associated works are inappropriate development.

Other considerations

29. The appellant argues that there is a need for the parking and storage uses in the area and that his having cleaned up the site has averted a threat to the Green Belt. However, there is no information before me to demonstrate this need or to show that there was a threat to the Green Belt which has been addressed by works on the site by the appellant.
30. My attention has been drawn, by the appellant, to an appeal decision (Appeal Reference APP/K3605/W/17/3187505) which relates to the expansion of a Motorway Service Area. On the basis of the description of development I do not regard it as directly relevant to the current appeal. The appellant also refers to appeal decisions relating to the storage of containers in the Green Belt but there are very limited details of these cases. In any event I have found the appeal development to be harmful on its own terms.

Conclusions

31. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have not identified any benefits, associated with the use for the storage and stationing of a mobile home, the parking of haulage lorries, storage of containers and building materials or for local transport infrastructure or for B8 commercial storage which would clearly outweigh the harm to the Green Belt by reason of inappropriateness. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist. The development is therefore contrary to Policy 49 of the Local Plan and Policy 7.16 of the London Plan.
32. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

33. An appeal under ground (f) is on the basis 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.
34. The grounds put forward by the appellants for ground (f) are largely repeating those made under ground (b) and (d) which I have dealt with. The exception is that the appellants suggest that step (4) is deleted and that step (3) is amended to refer to the retention of the land in a neat and tidy condition. In terms of step (4) the appellants refer to this step as requiring reversion to agricultural land, which given their views regarding the previous use of the land, they consider to be unreasonable. However, step (4) does not require reversion to agricultural land, rather it requires that the land is prepared to revert back to rough grassland.
35. The appellants refer to the land being overgrown when they purchased it. Notwithstanding the reference to the removal of rubbish and material from the land by the appellant, this would suggest that the site as a whole had a natural appearance when they purchased it. The steps required by the notice appear to

me to be those required to return the land to its previous appearance and to remedy the harm to the Green Belt.

36. For the reasons given above, I conclude that the appeals on ground (f) should fail.

Ground (g)

37. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that in the light of the expense to which they have been put in cleaning up the site, they may not be able to comply with the notice in the short term. On this basis they request that the compliance period be extended from 3 months to 12 months.
38. There no evidence before me to demonstrate the effect which compliance with the notice would have on the appellants business or livelihoods or to show the costs associated with the clean-up of the site. In the case of the latter I note that the appellants say that the site was used for tipping of inert material, which suggests that the costs of cleaning it up were not as substantial as might have been the case if the land were contaminated in some way.
39. The appellants say that the mobile home is not used for a residential purpose. Therefore, as there is no evidence of it being used at the moment, there is no issue regarding the potential for someone to lose their home to be considered in this case. There would not be any complex building operations required to remove materials associated with the change of use from the site or to prepare the land to revert back to rough grassland.
40. Taking all of these matters into consideration I find that the 3-month period afforded by the notice does not fall short of what is reasonable. For the reasons given above, I conclude that the appeals on ground (g) should fail.

Conclusion

41. 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 (Appeal A).

FORMAL DECISIONS

Appeal A Ref: APP/G5180/C/19/3230784; and

Appeal B Ref: APP/G5180/C/19/3230787

42. It is directed that the enforcement notice be corrected in Schedule 3 by deleting the words "from an agricultural use" and be varied in Schedule 3 and Step 1 of Schedule 5 by deleting the words "office/residential use" and substituting them with "residential use". Subject to this correction and variation, the appeals are dismissed, and the enforcement notice is upheld.

Appeal A Ref: APP/G5180/C/19/3230784

43. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sarah Dyer Inspector