



Appeal Decisions

Site visit made on 18 December 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal A - Appeal Ref: APP/E2340/C/19/3227381

Land to the south of Robinson Lane, Brierfield, Nelson, Lancashire

- 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 Safraz Chaudrey against an enforcement notice issued by Pendle Borough Council.
 - The enforcement notice was issued on 8 April 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last ten years, the material change of use of the land from a use for residential occupation to a mixed use for residential occupation and the storage of motor vehicles.
 - The requirements of the notice are: i) Cease using the land for the storage of motor vehicles. ii) Remove all vehicles from the land which are not owned, registered to and used for the domestic purposes by persons resident at the property. Use thereafter to be restricted to the parking of 6 motor vehicles per house which are owned, registered to and used for domestic purposes by persons resident at the property or visitors to the property.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B - Appeal Ref: APP/E2340/C/19/3225429

Land to the south of Robinson Lane, Brierfield, Nelson, Lancashire

- 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 S Choudrey against an enforcement notice issued by Pendle Borough Council.
 - The enforcement notice was issued on 12 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last ten years, the material change of use of the land from a use for residential occupation to a mixed use for residential occupation and the storage of motor vehicles.
 - The requirements of the notice are: i) Cease using the land for the storage of motor vehicles. ii) Remove all vehicles from the land which are not owned, registered to and used for the domestic purposes by persons resident at the property. Use thereafter to be restricted to the parking of 6 motor vehicles per house which are owned, registered to and used for domestic purposes by persons resident at the property or visitors to the property.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. It is directed that the both the enforcement notices be amended by:
 - 1) The deletion of the final sentence in the requirements paragraph, and its substitution with: 'Use thereafter to be restricted to the permanent parking of 6 motor vehicles per house which are owned, registered to and used for domestic purposes by persons resident at the property or visitors to the property.'
2. Subject to these amendments, Appeals A and B are dismissed and the enforcement notices are upheld.

Preliminary Matters

3. Although both enforcement notices give the same address, which is 'Land to the south of Robinson Lane', they refer to two areas of land that are close to each other. With regard to grounds (f) and (g) of Appeals A and B, I have made no distinction between the two areas as the issues at hand are the same in both cases.

Appeal A only - ground (d)

4. The appeal on ground (d) is that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by these matters. The main issue is whether or not the alleged material change of use has, on the balance of probability, occurred for a continuous period of 10 years or more prior to the date of issue of the enforcement notice, ie 8 April 2009. The onus of proof lies on the appellant.
5. At Appendix 2, the Council have submitted two Google Earth images of the appeal site. The first, dated 30 May 2009, shows the site with only a small number of vehicles present. The second, dated 29 June 2018, shows a significantly greater number of vehicles on the land. This substantial increase, far beyond that which would normally be expected at a residential property, indicates that a material change of use to storage has indeed taken place.
6. The appellant contends that, prior to the serving of the notice, the land had been used for the parking of motor vehicles for a period of 10 years or more. He states that he has owned the land for longer than that period and is able to provide first-hand knowledge and account that this is the case. He further asserts that neighbours at Galen and Acre Wood Cottage can corroborate that the site has been used for the parking of cars for 10 years or more. However, the lack of corroborating evidence from the neighbours limits the weight I can give to this to this assertion.
7. Some cars may well have been parked on the appeal site for 10 years or more. However, the key matter here is the point at which the number of cars on the land increased to the point where it could no longer be considered commensurate with residential usage. The photographs provided by the Council would indicate that the material change of use to the storage of cars commenced at some time after May 2009.
8. I therefore conclude that the appeal under ground (d) is not supported by sufficient evidence from the appellant to demonstrate that, on the balance of

probability, the land in question has been in continuous use for the storage of cars for a period of 10 years or more. It follows that, at the time the enforcement notice was issued, it was not too late for the LPA to take enforcement action against the matters alleged within the notice. As a result, the appeal under ground (d) must fail.

Appeal A only - ground (a)

Main Issues

9. The main issues are:

- Whether the development amounts to inappropriate development in the Green Belt;
- The effect on the openness and purposes of the Green Belt; and
- If harm arises from there being inappropriate development in the Green Belt, and any other harm, whether this is clearly outweighed by other considerations so as to amount to the very special circumstances.

Reasons

Whether or not inappropriate development

10. There is no dispute between the main parties that the site is located in the Green Belt. Section 13 of the National Planning Policy Framework (NPPF) attaches great importance to Green Belts, the essential characteristics of which are their openness and permanence. Paragraph 146 of the NPPF states that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land, and examples are given such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds.
11. Policy 3 of the Replacement Pendle Local Plan 2001-2016 (LP) states that 'any appropriate development will only be permitted in the following circumstances: 1) The proposal will not be visually detrimental to the Green Belt by reason of its siting, materials or design and will maintain the openness of the Green Belt.' Policy ENV 2 of the Pendle Local Plan Part 1: Core Strategy (CS) similarly requires that developments should maintain the openness of the Green Belt. These policies are broadly consistent with the aims of the NPPF.
12. The Council are concerned that the unauthorised storage of large numbers of motor vehicles on the site has a detrimental impact on the openness of the Green Belt. They estimate that approximately 60-85 vehicles are stored on the site, and this is borne out by my observations on my site visit.
13. It appears to me that the physical presence of the vehicles parked on the land has a significant impact on the openness of the Green Belt, due to their sheer volume and spread. It is the case that the cars are within well-defined existing areas, and are mostly parked on the established private drive and parking areas. There is no public right of way along the drive.
14. However, openness can be considered as meaning an absence of built or otherwise urbanising development. The appellant argues that the land is enclosed by existing development and is not readily apparent from public

viewpoints. The Council's evidence confirms that some of the cars can be seen from Footpath 18 at a distance of approximately 350m from the site, and from Greenhead Lane, at a distance of around 600m away. Although the vehicles are visible, they are not particularly prominent from these locations.

15. Nevertheless, whilst views towards a development may be a factor, openness is a spatial concept, and so visibility from the public realm is not determinative. Consequently, I consider that the development, by virtue of its physical volume, has reduced the openness of the Green Belt quite substantially. It follows that the material change of use in this case amounts to inappropriate development within the Green Belt, having regard to local and national planning policy.

The planning balance and conclusion

16. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The NPPF directs that substantial weight is to be given to any harm to the Green Belt. 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.
17. No considerations have been advanced by the appellant to justify the otherwise inappropriate development. Therefore, in the absence of compelling evidence to the contrary, I find that the very special circumstances necessary to justify the approval of inappropriate development have not been demonstrated. The appeal on ground (a), and the deemed application for planning permission, must therefore fail.

Appeals A and B - ground (f)

18. The appeal on ground (f) is that the steps required to comply with the requirements of the notices are excessive.
19. Both notices would limit to a maximum of six the number of cars parked at each residence on the respective appeal sites. Those cars would be required to be owned, registered to and used for domestic purposes by persons resident at, or visitors to, each property. The appellants are concerned that this would be unduly restrictive to the normal domestic operation of the properties, and would be more onerous than the conditions afforded to other 'normal' houses.
20. They contend that the properties are large and capable of accommodating extended family, and so more than six cars may be required. There would be a need for additional cars belonging, for example, to domestic staff and visitors. I accept that, if events were held, more than six cars would be likely to be present. However, the appellants do not specify how many such events they would expect to host each year.
21. Similarly, they do not state the maximum numbers of cars they consider would be sufficient for their purposes. In the absence of this information, I consider a maximum of six vehicles to be reasonable on a day to day basis. This number would be relatively easy for the Council to monitor and given the scale of the unauthorised change of use, I consider it appropriate that a limit on the number of parked cars should be imposed. However, in light of the appellants' concerns, I have directed that the enforcement notices be amended

to require six 'permanent' parking spaces, thus leaving some leeway for visitors to the properties.

22. The purpose of the notices is to remedy any breach of planning control. Taking the above factors into account, I consider that the requirements are commensurate with those purposes, and so the appeals on ground (f) fail.

Appeals A and B - ground (g)

23. The appeal on ground (g) is that the time given to comply with the notice is too short.
24. The appellants contend that, whilst no physical works are needed to the land, there is nonetheless a requirement find an alternative site for the cars. They state that this would take time due to the need for procurement or to agree suitable and appropriate leasehold terms. They are concerned that any new location for the cars needs to be suitable and secure, given the possibility of vandalism or theft. In view of these concerns, a period of six months is sought.
25. However, it is the cessation of the storage use and the removal of the vehicles that are required by the notices and three months is a reasonable time in which to comply with the them in this respect. Whilst I acknowledge the appellants wish for the cars to be removed to a suitable location, they have provided little detailed information or evidence as to why six months should be needed.
26. On the evidence before me, I therefore consider the period of three months to be a reasonable period in which to comply with the requirements of the notices. As a result, the appeals on ground (g) fail.

Conclusion

27. Appeal A and Appeal B are dismissed, and the enforcement notices are upheld.

Elaine Gray

INSPECTOR