



Appeal Decision

Site visit made on 10 February 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

Appeal Ref: APP/C1950/C/19/3223023

**Land adjoining Woodlands, Coopers Lane Road, Northaw, Potters Bar
EN6 4DJ**

- 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 Firat Mayil against an enforcement notice issued by Welwyn Hatfield Borough Council.
- The enforcement notice was issued on 4 February 2019.
- The breach of planning control as alleged in the notice is the unauthorised creation of a hard surface involving the importation of hardcore, scalpings and other hard surface materials; plus the siting of secure storage units and the erection of a gate.
- The requirements of the notice are: -
 - (i) Remove from the Land all hardcore, scalpings and all other such hard surface materials used for the creation of the hard surface.
 - (ii) Restore the Land to the condition that it was in prior to the creation of the hardsurface.
 - (iii) Remove the secure storage units from the Land, including the unit with the roller shutter, uPVC windows and uPVC door.
 - (iv) Take down the gate shown on the photograph attached to the notice marked A and remove from the Land.
 - (v) Remove from the Land all materials, debris, plant and equipment associated with requirements (i) to (iv) above.
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c)&(d) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

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

Procedural Matters

1. The Appeal Statement is expressed to be made on behalf of four parties including landowners and mortgagee, but the appeal is brought by Mr Mayil only.
2. The National Planning Policy Framework was updated on 19 February 2019, after the enforcement notice was issued. Should the appeals on grounds (c) and (d) fail and the ground (a) falls to be considered then it will be the updated national policy document that applies.

The appeal on ground (c)

3. The onus is on the appellant under this ground to make out the case that the matters alleged in the notice do not constitute a breach of planning control.

4. The enforcement notice is directed at a hard surface laid at the appeal site along with secure storage units and a gate. The appeal brought on ground (c) relates to the storage units and gate only.
5. With regard to the secure storage units, the appellant relies upon Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015. Subject to certain limitations and conditions this permits the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.
6. There is a row of steel containers and another storage unit with windows on the appeal site. The appellant says they are not secured to the land and are temporary in nature. The way that Class A is framed, the units do not need to be temporary in nature. Indeed, the Class includes the provision of buildings, but they must be required temporarily only and for purposes in connection with operations at the appeal site or adjoining land.
7. The appellant states that the units are used to store machinery without further elaboration. Thus, it is unclear for what purposes the machinery is used. During my site visit, I saw inside four containers. All four were packed full of items. In one, an air conditioning unit and metal kitchen units were visible whilst the others mostly contained domestic goods such as table and chairs, garden furniture, a mattress, carpet and boxed items. Thus, they appeared to be in use for general storage. There was no sign of items used in conjunction with operations being carried on at the site or adjoining land.
8. If, as the Council suggests, the containers were used in connection with the creation of the hard surface within the site then they cannot be permitted development by virtue of paragraph A.1.(b). This provides that development is not permitted by Class A if planning permission is required for those operations but not granted or deemed to be granted. The creation of the hard surface was an engineering operation amounting to 'development' for the purposes of Section 55(1) of the 1990 Act for which planning permission was required by Section 57 but has not been granted.
9. It is not altogether clear from the references to containers being temporary and not affixed to the land if the appellant is seeking to assert that the storage units amount to a use of land rather than operational development. The Council has addressed this point and I shall do likewise for completeness.
10. Operational development is the carrying out of building, engineering, mining or other operations in, on, over or under land which requires planning permission.
11. A building is defined by section 336 as including any structure or erection. The three established primary factors to ascertain whether there is a building operation are (a) that it is of a size to be constructed on site, as opposed to being brought onto the site (b) permanence and (c) physical attachment. No one factor is decisive.
12. The steel containers are of a kind typically used as shipping or road containers. Another unit of different design has a roller shutter and windows. All are most likely to have been brought onto the land in their current form. They are not affixed to the ground. These factors could indicate that the containers do not

involve a building operation. However, each container is undoubtedly considerably heavy even when empty and would almost certainly require specialist lifting equipment to be moved. From the evidence, they appear to have remained in situ. As a matter of fact and degree, I consider that when assessed against the tests of size, permanency and physical attachment, the containers would be a building operation for the purposes of section 55(1) of the 1990 Act requiring planning permission.

13. The large double gate is set back from the lane. Schedule 2, Part 2, Class A of the GPDO provides for the erection of a gate as permitted development provided the height does not exceed 2m above ground level, where it is not adjacent to a highway. Wood has been affixed to the metal gates exceeding 2m in height. Measurements taken during my site visit confirmed that to be so. The gates cannot be permitted development in consequence.
14. The appellant acknowledges that the wood is unauthorised having been added a year or so before the notice was issued but argues that the metal gates existed for some time before then. Nevertheless, what now exists is a different single structure formed of metal and wood. From outward appearances, it looks to be wood only. In any event, the height of the metal gate was measured by the parties during my site visit at 2.2m above ground level at the outer edge. Thus, it still exceeds the threshold for permitted development within Class A even if the metal part could be considered separately with the wood removed.
15. I conclude as a matter of fact that the matters alleged in the notice do constitute a breach of planning control. The ground (c) appeal fails.

The appeal on ground (d)

16. In a ground (d) appeal, the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is the balance of probabilities. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action.
17. Where, as in this case, the allegation involves operational development section 171B(1) of the 1990 Act provides that no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Therefore, to succeed on this ground, the development must have been substantially complete by 4 February 2015.
18. The appellant maintains that the metal gate has been in situ for over 4 years but acknowledges there is no evidence to demonstrate this and does not seek to advance the case further. In the absence of any evidence, the burden of proof is not discharged for the gate.
19. It is also maintained that the hard surface has been laid for more than 5 years.
20. When a prior approval application¹ for an agricultural building at the site was refused in May 2014 the Officer's report stated: "Following a site visit it was apparent that the hard standing, already constructed, is to be used in conjunction with the proposed agricultural building.". The report went on to say *"the area of woodland that has already been lost to begin construction of this proposal is substantial. The loss of this patch of woodland has urbanised the site and the associated hardstanding is considered excessive."*

¹ Council ref: SG/2014/0967/AG

21. Whilst acknowledging these and other quotes, the Council submits that the hard surfacing constitutes a new engineering operation over a much larger area of land. It produces copy photographs taken by a Council Officer "circa 2014" of an uneven surface scattered with rubble and heaped materials deposited around parts of the site. Vegetation was still growing in between. It bears no resemblance to how the site now appears having been cleared and levelled.
22. The Council produces an Appeal Decision² where a hardstanding which appeared more substantial than that which existed before and must have required a considerable volume of new material was found to involve engineering operations requiring planning permission. The ground (d) appeal failed in consequence. Of course, it is difficult to draw comparisons without full details. As a point of principle if engineering works have been carried out which require planning permission then the 4-year period will start to run afresh.
23. Aerial images supplied by the appellant are said to date from 2015 and 2017. It is acknowledged by the appellant that the 2015 image is of poor quality. Despite this, it is maintained that the image clearly shows an opening in the woods, circled red, in the location which is subject to the notice.
24. The image is too hazy to identify if the hardstanding was present, but it would not assist the appellant in any event because the image is dated 8 October 2015. It is too late to demonstrate that the hard surface existed on 4 February 2015 as required if this ground is to succeed. On the 2017 image an area of hard surfacing can be seen. This is smaller than the area now enforced against and supports the Council's case that there has been a more recent operation affecting a much larger area.
25. The appellant's evidence is also contradicted by the Council whose Officer observed the hard surface under construction by contractors using heavy plant during a site inspection on 1 November 2018. Copy photographs taken at that time and two months later show the entire site having been cleared with works still in progress. They show the presence of soil and deposits forming bunds at the outer edges. It is evident that considerable quantities of hardcore and other materials have been introduced involving a large-scale operation which has seen the ground levels being raised.
26. Whilst there is evidence of an incomplete hardstanding once on part of the site, the photographs clearly show it being replaced in 2018 with a much larger hard surface affecting the site in its entirety. On the evidence, it is not the same hard surface which existed previously or one that was substantially complete. The new hard surface involved a significant engineering operation requiring planning permission. It had not been in place for more than 4 years by the time the notice was issued to become immune from enforcement action.
27. The ground (d) appeal fails.

The appeal on ground (a) and the deemed planning application

Main Issues

28. The appeal site lies within the Metropolitan Green Belt. The main issues are:

² Appeal ref: APP/J1915/C/18/3194055 dated 17 December 2018

- whether the development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework ('the Framework') and development plan policy;
- the effect on the openness of the Green Belt and the purposes of including land within it;
- the effect on the character and appearance of the surrounding area;
- the effect on ancient woodland;
- 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.

Reasons

Whether inappropriate development

29. The deemed application is for the development as built on the date the enforcement notice was issued. It is possible to grant permission for the whole or part of that development.
30. The appellant asserts that it is irrelevant whether the development is inappropriate development in the Green Belt because it is either permitted development or immune from enforcement action. The appeals on grounds (c) and (d) have failed and so local and national planning policy becomes relevant.
31. Paragraph 133 of the National Planning Policy Framework ('the Framework') makes clear that the Government attaches great importance to Green Belts. By virtue of Paragraph 145 the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to certain exceptions.
32. Certain forms of development are explicitly listed as not inappropriate development. No exceptions are identified as applicable in this case. Therefore, the gate and storage units are inappropriate development. However, a hardstanding would ordinarily be regarded as an engineering operation which by virtue of Paragraph 146b) is not inappropriate development in the Green Belt provided it preserves openness and does not conflict with the purposes of including land within it.

Openness & Green Belt purposes

33. As set out in Paragraph 133 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence. This is also reflected within the Council's draft Policy SADM 34 of the emerging Local Plan from 2016. Its current adopted Policy GBSP1 of the Welwyn Hatfield District Plan 2005 ('LP') states that the Green Belt will be maintained.
34. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt found within Paragraph 134 which include to assist in safeguarding the countryside from encroachment.
35. The concept of 'openness' in Green Belt terms does not imply freedom from any form of development. Depending on the circumstances it can have visual

as well as spatial aspects. Thus, the laying of a hard surface which cannot be seen outside the site is still capable of affecting openness. In this instance the hardstanding is vast and has a considerable visual impact as it consumes such a large area across virtually all the appeal site.

36. The containers are large and bulky. Combined with their number they occupy a sizable area resulting in an appreciable loss of openness in spatial and visual terms. The high and wide gates have introduced a physical and visual barrier at the entrance of the site which is clearly visible from Coopers Lane Road. They have reduced the openness to an appreciable degree.
37. Thus, all aspects of the development fail to preserve the openness of the Green Belt and it has encroached upon the countryside in conflict with the Green Belt purposes. In consequence, the hardstanding is inappropriate development also.

Character and appearance

38. A dwelling is located on the neighbouring plot, but the area is predominantly rural in character with fields behind the hedge/tree lined lane. The appeal site forms part of Cattlegate Wood, which is a designated ancient woodland. Where part of the ancient woodland once stood, there is now a vast cleared and hard surfaced area with several containers. The steel containers are uniform in size and appearance. One other unit which is set apart has a metal roller shutter with windows and door. All are functional without design merit. They introduce an awkward industrial appearance into this wooded area totally unbefitting to its locality.
39. The huge amount of hardstanding has brought about a harsh and permanent change to the character and appearance of the site which is highly detrimental.
40. The addition of wood to the gates at the site entrance has brought a crude outward appearance. Even without the wood the height, design and black metal construction of the gates are reminiscent of those more commonly found at an industrial site. They are extremely unsympathetic and out of keeping within this Green Belt setting where woodland forms the backdrop.
41. I find that the hard surface, gate and containers individually and collectively have a substantial adverse effect on the character and appearance of the site and surrounding area contrary to LP Policies D1 and D2 which seek high quality design which respects and relates to character and context of the area. Nor does it conserve, maintain or enhance the rural character of the area as contemplated by LP Policy RA10. There is also conflict with Paragraph 124 of the Framework which seeks good design as a key aspect of sustainable development and Paragraph 127 which, amongst other things, promotes development which adds to the overall quality of the area and is sympathetic to the local character and landscape setting.

Ancient woodland

42. Ancient woodland has already been removed to accommodate the hard surface and storage units. The aerial photographs demonstrate that more trees have clearly been lost than was apparent in 2017. It is irrelevant that the appeal site lies outside of the conservation area and the trees are not protected by tree preservation orders. Protection is afforded in other ways through the tree felling licensing and environment impact assessment regime administered by The Forestry Commission. Planning permission may not have been required for

removal of the trees, but it was required for the development that it facilitated. The area of woodland affected is a relevant consideration in this planning decision.

43. Ancient woodland is an irreplaceable and valued habitat. The Framework confirms that the planning system should contribute to and enhance the natural and local environment. In relation to trees, Paragraph 175c) advises that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. The examples given within the footnote to Paragraph 175c of when wholly exceptional reasons might apply are infrastructure projects and where the public benefit would clearly outweigh the loss or deterioration of habitat.
44. 'Ancient woodland' is defined in the glossary to the Framework as "An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites".
45. There are no public benefits identified. The private benefits accruing from the development do not suffice to outweigh the loss of ancient woodland which is contrary to Paragraph 175c) as aforesaid and LP Policy R17 which seeks to protect against the loss of trees/woodland. The Council also cites LP Policy R15 which protects wildlife sites or regionally important geological/geomorphological sites, but it is not apparent how this is engaged if at all.

Other considerations

46. Other than the metal gates having been in situ for some years (which has not been demonstrated) and the wood being affixed to them to prevent vandalism, there are no other considerations advanced in favour of the development. The benefits are personal to the appellant and thus carry little weight.

Planning & Green Belt balance

47. The development is inappropriate development in the Green Belt which is harmful by definition and gives rise to substantial harm to openness. According to Paragraph 144 of the revised Framework substantial weight should be given to any harm to the Green Belt.
48. There is substantial harm to the character and appearance of the area and from loss of ancient woodland.
49. I have balanced the totality of harm against those factors advanced in favour of the development. Looking at the case as a whole, I consider that the other considerations do not clearly outweigh the harm. I have also considered whether permission should be granted for part only of the development, but even then, the other considerations do not clearly outweigh the harm that I have identified as arising from those individual parts.
50. Consequently, very special circumstances to justify the development or any part thereof do not exist.

Conclusion on ground (a) and the deemed planning application

51. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Formal Decision

52. 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.

KR Seward

INSPECTOR