



Appeal Decision

Site visit made on 21 January 2019

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 March 2020

Appeal Ref: APP/V1505/C/19/3236268

Land at Bromfords Farm, Nevenden Road, Wickford, Essex, SS12 0QB

- 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 Act").
 - The appeal is made by Mr Hany Bassaid against an enforcement notice issued by the Basildon Borough Council.
 - The enforcement notice was issued on 2 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of bunds and the laying of hardcore and associated material onto the land creating a hardstanding (identified as area approximately marked in blue hatching on the attached plan).
 - The requirements of the notice are:
 - i. Reinstate the original level of the land by removing from the land all material used to create the bunds
 - ii. Remove all hard surfacing including the associated compacted earth, hardcore and gravel from the land
 - iii. Remove all building materials, construction debris, associated spoils and rubble brought onto the land in connection with the unauthorised development from the land.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on grounds set out in section 174(2)(a), (f) and (g) of the Act.
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Decision

1. It is directed that the enforcement notice is varied in Section 6 by the deletion of the words "Four (4)" and the substitution instead of the words "Six (6)".
2. Subject to the variation 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 Act.

Procedural matters

3. At the site visit an adjoining landowner requested that I should look at the development from her property. However, I was able to view the development in the context of her property from within the appeal site. Therefore I did not enter onto the adjoining owner's land as it was unnecessary for me to do so.

Appeal on ground (a)

4. The appeal site is the land and buildings shown within the red line on the plan attached to the enforcement notice. The site, known as Bromfords Farm, is approximately 7 hectares in size and is located within the Green Belt (GB).

5. The appeal on ground (a) is that planning permission ought to be granted, either in whole or in part, for the breach of planning control as described in the banner heading above. In this regard therefore I also take into account the block plan submitted by the appellant proposing a reduction in the quantity and area of development.

Main Issues

6. Having regard to local and national planning policies the main issues are:
- (i) whether the development is 'inappropriate development' in the GB, with particular regard to its effect on openness and the purposes of including land within the GB;
 - (ii) the effect on the character and appearance of the area;
 - (iii) if inappropriate, whether there are any other considerations which would outweigh the harm to the GB by reason of inappropriateness, and any other harm.

(i) Whether Inappropriate

7. The purpose of the intended bunds and hardstanding area is not entirely clear. The appellant's statement (para. 2.1) refers to the site as being part of an existing farm and that the hardstanding is to provide a storage and manoeuvring area for agricultural machinery and crops, while the bunds (para. 4.1) would provide enclosure and to act as a security measure. It then goes on to say that following the creation of the hardstanding area it (or I assume part of it at least) would be used for the construction of an agricultural building utilising permitted development rights. Reference is also made to the intended purchase of 120 acres of land in association with the farm (although not purchased when the Council issued the enforcement and Stop Notice).
8. However, no substantive or convincing evidence has been submitted to demonstrate that any of the buildings on site are in use for agriculture, or that the land forms part of an agricultural holding, or indeed that any of the land was actually being used for agriculture at the date the notice was issued. It appeared from my own observations that the main activities on site were of an industrial nature. It would appear therefore that if any part of the appeal site is in use for agriculture it formed part of a mixed use. As such, it is not clear to me that any agricultural permitted development rights are or would be available to the appellant.
9. Notwithstanding the above, there is no dispute that the development carried out constitutes engineering operations and hence are 'development' as defined at Section 55 of the Act.
10. Paragraph 146(b) of the NPPF¹ sets out that engineering operations are not inappropriate development in the GB provided they preserve its openness and do not conflict with the purposes of including land within it.
11. With regard to the effect on GB openness, no details of the exact quantum of material that has been deposited on site has been provided. From my own observations and the submitted "indicative" plan I make my own estimate of coverage to be approximately between 2m-3m in height x 130m x 30m - hence

¹ National Planning Policy Framework (2019)

between 7,800m³ and 11,700m³. Whatever the precise quantity of tipped material may be, in purely visual terms it is without doubt a very substantial amount.

12. Given the context of flat open fields beyond to the south and to the west I consider that the considerable scale and bulk of the development significantly reduces the openness of the GB. In doing so it represents large scale urbanising development which encroaches into the countryside, thus also conflicting with one of the GB purposes². Given this significant reduction in openness and conflict with one of the GB purposes, the development would not be an exception within NPPF paragraph 146(b). It would therefore be inappropriate development in the GB.
13. With regard to the proposed reduced area of bunds and hardstanding shown in the appellant's submitted block plan, I consider that the proposed remaining development would still be substantial. It would also severely reduce the openness of the GB and encroach into the countryside.
14. For these reasons I find the development to be inappropriate development in the GB. Inappropriate development is, by definition³, harmful to the GB and should not be approved except in very special circumstances. I attach substantial weight to this harm.

(ii) Character and appearance of the area

15. As stated previously, there is very little information before me as to what types or levels of agricultural use takes place as to justify such a substantial area of bunds and hardstanding, even for the proposed reduced area. I am wholly unconvinced that such development is proportionate or reasonable for the claimed security purposes, storage of crops and machinery, and for turning and manoeuvring of agricultural vehicles.
16. Given the scale and coverage of land take that would occur resulting from the creation of bunds and hardstanding, whether from all of the tipped material or from the proposed reduced area, it would be seen as a significant urbanising development into previously open fields, thereby harming significantly the character and appearance of the countryside.
17. During my inspection of the site I saw that the deposited material appeared to be mixed in with demolition waste. In this regard no details of the source/s and precise nature and composition of the deposited materials have been provided with the appeal submissions. Consequently, I am unsure as to whether there is any contamination risk of the underlying ground, and whether or not there would continue to be so if any of the material were to remain on site. However, even without any contamination risk, the development is significantly harmful to the character and appearance of the area as I have described above.
18. As such, the development does not represent good design or a positive use of land in the GB. It thereby conflicts with Basildon Emerging Local Plan Policy DES1 and GB11, and the provisions of the NPPF.

² NPPF paragraph 134(c)

³ NPPF paragraph 143

(iii) Other considerations

19. It is argued that the development would support the rural economy. However, given the lack of supporting information as to the claimed farming/agricultural use of the site and justification for the development, I am unclear as to how or to what extent that would be so.
20. Drawing all the forgoing factors together; the development is inappropriate development in the GB and as such is harmful by definition. I attach substantial weight to that harm, and further harm arises from the adverse effect I have identified to the character and appearance of the area. Against this harm there are no other considerations advanced in support of allowing the appeal other than those set out in the appellant's statement which I have already referred to previously.
21. To conclude; the other considerations submitted in support of the appeal do not clearly outweigh the very substantial harm I have identified. As such, very special circumstances necessary to justify inappropriate development in the GB do not exist. The appeal on ground (a) therefore fails.

The appeal on ground (f)

22. The ground of appeal 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.
23. The appellant refers to the agricultural use of the site. However, for reasons set out previously I have not found any justification, agricultural or otherwise, for allowing any of the development to remain on site.
24. It is clear that the notice requirements are aimed at restoring the land to its former condition. Thus, the notice simply requires the appellant to undo what he has done – it cannot therefore be an excessive requirement for the purposes of remedying the breach of planning control. The appeal on ground (f) fails.

The appeal on ground (g)

25. The ground of appeal is that the compliance period specified in the notice falls short of what should reasonably be allowed. The notice specifies 4 months. The appellant seeks a period of 6 months.
26. Given the very substantial harm to the GB and to the character and appearance of the area, I take the view that the breach of planning control must be remedied as soon as possible. However, given the sheer quantity of material to be removed, together with my concerns over potential contamination, and linked to that - how and where it might need to be relocated and received elsewhere, I acknowledge that a period of 4 months is likely to be too short. Given these circumstances I find that a compliance period of 6 months would be more reasonable. The appeal on ground (g) succeeds to this extent.

Thomas Shields

INSPECTOR