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## Appeal Decision

Site visit made on 13 February 2020

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 April 2020**

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**Appeal Ref: APP/H1515/C/19/3224321**

**Land at The Chequers, Chequers Road, South Weald, Essex CM14 5RG held within title number EX460271**

- 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 Joseph Manning (Leisure Attractions Limited) against an enforcement notice issued by Brentwood Borough Council.
- The enforcement notice was issued on 6 February 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change of use of the land, shown edged with red on the plan attached to the notice, from vehicle parking ancillary to the use of the land as a Public House, to a use for the storage and parking of goods vehicles and trailers on the land, shown for the purposes of identification only in the approximate position hatched blue on the plan attached to the notice.
- The requirements of the notice are to:
  1. Permanently cease the use of the land for the parking and storage of goods vehicles and trailers.
  2. Permanently remove the goods vehicles and trailers from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b) and (d) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.

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### Decision

1. 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.

### Ground (b)

2. For an appeal to be successful under this ground, I must be satisfied on the balance of probabilities that matters stated in the notice which may give rise to a breach of planning control have not occurred.
3. The plan attached to the notice has an area hatched in blue to identify where it is alleged the land is in use for the storage and parking of goods vehicles and trailers. The Council has approved the construction of a 2-storey dwelling with associated landscaping and infrastructure on the land<sup>1</sup> (the approved residential development), and I find as a matter of fact that a portion of that development (which had been partially completed on my site visit) lies within the blue hatched area of the plan.

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<sup>1</sup> 16/00344/FUL and 18/01928/FUL

4. While I accept the appellant's submission that the portion of the residential development within the blue hatched area is not available for the use alleged, and is not being used as such, the notice is explicit that the blue hatched area is the 'approximate position' of the use. In that regard, it is not incorrect: the blue hatched area as a matter of fact does contain the alleged use (which is not disputed by the appellant) and, notwithstanding the relatively small overlap upon it of the residential development where the alleged use does not occur, overall it acceptably approximates to the position of the alleged use.
5. I am therefore not satisfied on the balance of probabilities that matters stated in the notice which may give rise to a breach of planning control have not occurred. Accordingly, the appeal under ground (b) does not succeed.

#### **Ground (d)**

6. For the appeal to be successful under this ground, I must be satisfied on the balance of probabilities that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control by the matters alleged in the notice. Section 171B(3) of the Act provides that no enforcement action may be taken in respect to the alleged change of use after the end of the period of 10 years beginning with the date of the breach.
7. I note as background information that the appellant applied for a Lawful Development Certificate on 27 February 2018<sup>2</sup>. That application, which argued that the site was continuously in use for storage (Class B8<sup>3</sup>) for over 10 years, was refused by the Council on 13 April 2018.
8. An aerial photograph taken in 2000 submitted by the Council shows that part of the land within the blue hatched area of the notice plan was in use for vehicle parking ancillary to the use of the public house. However, a later photograph from 2009/10 it has submitted (said by the appellant to have been taken on 23 April 2010 and also submitted in his evidence) appears to show a separate surfaced area fenced off from the car park including a lorry body, a pick-up truck, a car and various materials nearer the road to the east.
9. The appellant has submitted a letter from Mr Hardy, a groundwork business operator, which states that his business surfaced the area in 2006 and thereafter stored items including plant equipment on the land for "several years" following permission from the landlord. The appellant's statutory declaration says he noted "building equipment, lorry bodies and trailers, building materials and various other items" on the land following his purchase of nearby Old MacDonald's Farm Park in 2005. Mr Dewey's statutory declaration states that he was similarly aware from 2006 of a storage area separated by a fence from the car park, and that he could see stored lorry bodies, cars, agricultural machinery and other materials. Mr Joseph's statutory declaration states that he observed a tractor, ploughs and a box-type storage unit on the land from 2006 and thereafter on agreement with the landlord stored items there which were associated with his bouncy castle business.
10. The Council conducted an enforcement investigation as to the use of the land in 2007 and took ground-level photographs. These photographs show what appears to be piles of granular material of some kind. Further, same or similar piles also appear in aerial photographs taken in 2006 and 2007. While the

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<sup>2</sup> 18/00323/S191

<sup>3</sup> The Town and Country Planning (Use Classes) Order 1987

appellant says the piles were aggregate associated with Mr Hardy's groundworks business, the Council highlights communication with the then owner, Mr Lambourn who stated that no change of use would occur without planning permission, and that the piles were connected with earthworks to facilitate planting and seeding for recreational purposes including functions for the public house. Given that subsequent aerial photographs do not show that the hardstanding was replaced by a planted and seeded area, I give limited weight to the communication from Mr Lambourn.

11. Taken together, the photographs and the corroborating witness evidence carry some weight although it is tempered by the absence of a document or contract evidencing any agreement to use the land for storage. However, it is sufficient evidence to satisfy me on the balance of probabilities that the land was used for storage from 2006. Notwithstanding that finding, I note that the public house closed in 2012 and was acquired by the appellant in 2014 who cleared the site in 2015 and has since stored goods vehicles, trailers and fairground rides and equipment there. There is significant evidence of this more recent storage use from the statutory declarations, Business Rates information and several photographs taken at various intervals from 2015. However, of key import to the success of this appeal ground is whether the storage use was continuous while the public house was closed.
12. The Council has submitted an aerial photograph taken in 2014 which it says confirms that the land was not used for storage at that time. While the land shows growth of vegetation relative to earlier photographs, the places where this is significant is limited and there is a reasonably good view of much of the site with no sign of storage use. Notwithstanding the appellant's claim that items were stored obscured from overhead view under the vegetation, I consider that the likelihood of all such stored items being completely hidden from view to be low. I have taken into account what individuals have said in their statutory declarations about use of the site for storage during the pub closure but they do not on the balance of probabilities persuade me that the land was used for storage at this time. Were the items as numerous as stated in the declarations, including several reasonably large items such as a tractor and farm equipment including ploughs, I find it unlikely that they would all be out of view in the photograph. I therefore give that evidence in the statutory declarations limited weight which, together with the absence of a documented agreement to use the land for storage during the period, leads me to conclude on the balance of probabilities that it did not occur.
13. Therefore, for the above reasons, I find that the use of the land for storage was not continuous in the 10 years before the date the enforcement notice was issued. Accordingly, I am not satisfied on the balance of probabilities that on that date no enforcement action could be taken in respect of the breach of planning control alleged in the notice. The appeal under ground (d) therefore fails.

## **Ground (a) and the deemed planning application**

### *Main Issues*

14. The main issues in this appeal are:

- whether the development is inappropriate development in the Green Belt;

- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area; 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*

Whether inappropriate development; Openness; Character and appearance

15. The National Planning Policy Framework (the Framework) advises at paragraph 146 that material changes of use are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. There is no operational development associated with the allegation. Therefore, the only effects to be considered are those associated with storing goods vehicles and trailers on the land compared to those from the land's lawful use for vehicle parking ancillary to use a public house.
16. The land is in an elevated position relative to part of adjacent Coxtie Green Road. At the time of my site visit, trailers upon the land were clearly visible from the roadside and the fields on its other side, despite some screening from vegetation on the boundary. I note what the appellant has said about having planted fast-growing conifers and his willingness to accept planting and landscaping conditions that might, in due course and together with the new residential development, entirely screen goods vehicles and trailers from view. However, even if successful in that regard, the openness of the Green Belt has a spatial aspect as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result.
17. The Framework states that "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 their permanence" (paragraph 133).
18. While I accept that the parked and stored vehicles and trailers are transitory and not permanent features, vehicles associated with use of the public house would tend not to be parked for any lengthy period of time and there would be regular periods (overnight, times of closure or low patronage) when the number of parked vehicles would be low or nil. In addition, goods vehicles and trailers by their nature are in general significantly greater in height, scale and mass than vehicles that would be parked by customers, staff and others associated with a public house. Accordingly, the parked and stored goods vehicles and trailers on the Green Belt site make the land significantly less open than its lawful use.
19. I note what the appellant says about the fact that the hardstanding was already in place and that the movement of cars in and out of the car park on a regular basis would give a greater impression of activity, which can be harmful to openness. However, in my judgement these factors do not outweigh the adverse impact of the more static, larger items on the site in the appeal development.

20. The appeal development does not extend the size of the site or encroach onto undeveloped land, and I accept that it is already developed and hard-surfaced. Nor does the appeal development have a significant effect on the potential merging of any towns. However, the use to which the notice relates is decidedly more urban and spatially intensive than parking for a countryside public house surrounded primarily by agricultural land. In this regard, it is "urban sprawl" in a rural location which is both inappropriate in the Green Belt through failure to preserve its openness and significantly harmful to the character and appearance of the countryside location even should vegetative screening at the boundary be improved to the degree stated by the appellant.

*Other considerations*

21. I have seen no substantive evidence that the development creates pollution or an increase in flood risk, or that it causes harm to highway safety or to the living conditions of neighbours. However, these are neutral factors which present no benefits over the lawful use. Consequently, I give them limited weight.
22. The use of the site for storage, with the associated security present, is less likely to experience fly-tipping than a vacant site. This is a benefit of moderate weight.
23. The Framework (paragraph 117) encourages the efficient use of land including, where appropriate, the use of previously developed land such as the appeal site. This is of moderate weight.
24. I accept it as more likely than not that the number of vehicle movements are lower than those associated with the use of a public house car park and that, being in close proximity to the appellant's site at Old MacDonald's Farm, lorry traffic travels a short distance to and from the storage site avoiding residential areas and other inappropriate routes. These are benefits of the development of significant weight.
25. A closely located storage site for the appellant's visitor attraction is also efficient in business terms and this benefit therefore assists in supporting the economy, local employment and a tourist and educational attraction enjoyed by families. The Framework (paragraph 80) says significant weight should be placed on the need to support economic growth and productivity, and I do so as the decision-maker in this appeal.

*Green Belt planning balance*

26. Paragraph 144 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found that significant harm would be caused to the character and appearance of the area. In totality, the harm is of a magnitude which weighs very heavily against the proposal.
27. Having considered all matters raised in support of the proposal I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the proposal is contrary to the guidance in the Framework, and Policies GB1, GB2 and CP1 of the Brentwood Replacement Local Plan (2005) which together seek to protect the Green Belt and the character and appearance of places.

28. Despite their age I do not find Policies GB1 and GB2 out-of-date as, when taken as a whole, they are consistent with the Framework for the purposes of this decision in requiring that, except in very special circumstances, permission will not be granted for material changes of use amounting to inappropriate development in Green Belt (through conflicting with the purposes of including land in the Green Belt or through harming its openness).
29. The appellant has said that the appeal development represents sustainable development. However, this is not my finding as the material change of use is in conflict with the development plan.
30. An emerging plan has been submitted to the Secretary of State for examination. It is not part of the adopted development plan. As it is not clear the extent to which any objections to its policies are unresolved or the extent to which its policies are consistent with the Framework, I give them limited weight and they do not alter my conclusion.

### **Conclusion**

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

*Andrew Walker*

INSPECTOR