



Appeal Decision

Site visit made on 17 December 2019

by **A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/C/19/3229014

Nottingham Care Village, 168 Spring Lane, Nottingham NG4 4PE

- 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 Anil Puri against an enforcement notice issued by Gedling Borough Council.
- The enforcement notice was issued on 16 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a hardstanding which has the appearance of a car park.
- The requirements of the notice are to: (1) Remove the area of hardstanding, (2) remove all resulting rubble and waste materials to a point of lawful disposal, and (3) reinstate the land to its previous undeveloped state.
- 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) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds on ground (g) and the enforcement notice is upheld with a correction and variations as set out in the Formal decision below.

Preliminary matters

1. It is apparent the notice alleges the construction of a hardstanding, but the words "*...which has the appearance of a car park*" are unnecessary. In a similar vein, it is important to bear in mind that the scope of the notice's requirement is limited by s173(4)(a) and (b) of the Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition. Section (5) sub-section (2) and (3), namely, to *remove waste material to a point of lawful disposal* and to *reinstate the land to its previous undeveloped state* to remedy the breach are, to me, too vague. The requirements to remove all rubble and waste materials and to reinstate the land to its previous condition are better and reasonable; the appellant being the one to know the condition of the land before the breach of planning control.
2. The notice requires the removal of the hardstanding but, for greater precision, it should be corrected and varied subject, of course, to the essential test of injustice. The issued notice attacks the carrying out of operational development without the required planning permission. The appeal parties interpreted the notice on this basis because it clearly alleges the construction of a hardstanding without permission. I am satisfied that the envisaged correction and variations would not cause any injustice to any party as the recipient was aware of what had gone wrong and what was required to remedy that wrong. I will therefore correct the notice using the powers available to me.

3. An application for costs is made by Gedling Borough Council against the appellant. This application is the subject of a separate Decision.

Ground (a)

4. No. 168 is a care home situated in a large spacious plot and there is a forecourt car park. The unauthorised hardstanding is located to the rear of the building accessed via an unadopted lane. The hardstanding, which is constructed with a layer of MOT sub-base, is a large space and the intention is to use it for additional parking. On 25 February 2019, an appeal against the Council's refusal of planning permission to retain the car park was dismissed [hereinafter referred to as 'the 2019 Inspector']¹.
5. In concluding that the car park encroaches into the countryside and fails to preserve the openness of the Green Belt, the 2019 Inspector found the development constitutes inappropriate development. The advanced other considerations did not amount to very special circumstances to justify grant of planning permission. The appellant's agent disagrees with aspects of the 2019 Inspector's conclusions. I should point out that whilst the findings of the previous Inspector are material and there is a need for consistency in the planning process, I am not bound to reach the same conclusions provided there are sound planning reasons for departing from his approach.
6. The appeal parties agree that the development constitutes inappropriate development inside the Green Belt. Given the nature and scale of the hardstanding, I have no reason to disagree. The case for the appellant however is, essentially, that other considerations should outweigh the harm to the Green Belt. If permanent planning permission is not granted, I should consider temporary permission.
7. The main issue to consider is this: whether the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development?
8. The appellant maintains that there is a need for an additional car park as it provides an overflow facility. The anticipation is that the appellant will enter into a future contract with the National Health Service [NHS], and this agreement requires additional parking facility. And so, the care home and parking layout has been reconfigured in anticipation of this contract. The initiative is to provide respite beds to patients no longer requiring round-the-clock medical attention. It is said that the existing home is well-placed to provide this local alternative, which has the potential to free-up capacity within the NHS, especially during the current pandemic, which would benefit the public and safeguard jobs. A similar argument was advanced during the previous appeal, but the 2019 Inspector found the evidence did not show that the additional car park was necessary.
9. The nub of the argument is that the unauthorised development is necessary. It is therefore down to the appellant to provide clear evidence to substantiate these assertions. In that context, I find the submitted information too vague. For example, the evidence presented does not clearly show when the contract will be agreed and its duration.

¹ APP/N3020/W/18/3212514.

10. Furthermore, it is unclear as to why such a large car park is required to meet contractual obligations the terms of which have not been agreed. There is no documentary evidence to substantiate the claim that this large hardstanding is a condition of the future contract, due to the scale of additional care services. The agent has been instructed to say that the car park is necessary, but that assertion is not corroborated. I appreciate the potential benefits of the NHS contract to the business and the wider community, but the uncertainty and lack of precise evidence affects the weight I attach to this line of argument in favour.
11. The care home is currently under-occupied, but the argument is that the existing car park which, incidentally, is a large space, is fully occupied. On occasions it is over-occupied with surplus vehicles parked on landscaped areas, which harm the appearance of the site and area. The argument is that presently staff parking requirements include five care staff per 12-hour shifts, a manager, a nominated individual, a cook, a kitchen assistant, a handyman, a gardener and a cleaner. The car park is also used by off-site medical personnel and deliveries as well as visitations from family and friends. It is contended that there are times when the forecourt car park might appear under-used. However, the evidence presented does not show the level or frequency of the existing car park's use.
12. Moreover, during site visits made by Council officers between October and November 2019, the number of parking spaces available varied between 10 and 21. There were two disabled parking spaces available for use on each occasion. The visits occurred at various times of the day. This survey casts some doubt over the assertion that additional car parking spaces are required because the existing facility cannot absorb future demand for on-site parking. The information provided does not sufficiently show why the existing car park can't be modified, adapted or fully utilised to meet the requirements of the future NHS contract.
13. Parked vehicles are likely to be noticeable from views along the lane, but the appellant maintains that the harm to openness could be mitigated by the installation of an alternative car park surface treatment. The suggestion is that a product such as Grasscrete, or a similar cellular system that allows grass to grow through, would potentially camouflage the sub-base. Additionally, a comprehensive landscaping scheme could be required and implemented by imposing planning conditions. The scheme would, over time, soften the visual effect of the hardstanding. Be that as it may, full details have not been provided and it is difficult to reach a firm conclusion as to the extent of any landscaping. Given the scale of the hard-surfacing, I am not persuaded these mitigating measures, individually or in combination, would sufficiently address my concerns about the urbanising effect of the hardstanding.
14. The care home is located within the Green Belt and any additional facility would be subject to this constraint, but this does not provide a strong enough justification to retain this large hardstanding.

Planning balance

15. The development constitutes inappropriate development and causes harm to openness of the Green Belt. The development represents encroachment conflicting with at least one purpose for designating land inside the Green Belt, which is a serious planning objection. This is a matter to which substantial

weight is given. Accordingly, there is conflict with the Green Belt protection objectives found in Local Planning Document Part 2 Local Plan 2018 Policy LPD 19, and national Green Belt policy found in the National Planning Policy Framework.

16. On the other side of the scales, there would be some social and economic benefits arising from retaining the hardstanding for use as an additional car park. I appreciate the argument that the area is required to meet future needs of the care home, that there is a need for respite care services in the locality and the NHS contract would be beneficial to the wider public as well as the care home operations. Nonetheless, on the evidence presented, the contract is yet to be secured and its terms are unknown. I am not persuaded that the scale of hardstanding is required to meet the likely increase in demand for on-site parking. I attach moderately some weight to this argument in favour.
17. It is appreciated that the site is within the Green Belt and any expansion or modification of the existing facility would be subject to strict local and national planning policy. This argument could be made in support of any development and is not strong enough justification to allow harmful development and I attach limited weight to this argument. Very limited weight is given to the possibility of imposing conditions requiring additional landscaping given the size, extent and scale of the hardstanding.
18. The case in favour of planning permission has been elegantly and forcefully put. Nevertheless in my planning judgement the advanced considerations in support of the appeal, whether taken individually or cumulatively, do not, on balance, clearly outweigh the conflict with planning policies designed to protect the Green Belt so as to justify the grant of a permanent planning permission on the basis of very special circumstances. It is not disproportionate to refuse permanent planning permission. I shall, however, consider the grant of temporary planning permission next.
19. The totality of harm to the Green Belt is substantial although it would be reduced were it for only a limited period. Nonetheless, the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. The latter might be appropriate where planning circumstances will change in a particular way at the end of that period.
20. A conditional temporary planning permission for five years is sought as an alternative to refusing the deemed application. The agent submits that the period would align with the duration of the anticipated NHS contract and would still secure revenue for the existing operations. Whilst the agent has been instructed to advance a case on the basis the hardstanding is necessary to deliver the NHS contract, as I have said elsewhere, the evidence presented does not substantiate this argument. The information provided does not clearly and precisely show when an NHS contract will be agreed, the extent or scope of the agreement, and how long the contract will last. In the absence of detailed supporting evidence, planning circumstances are unlikely to change at the end of the five-year period.

21. It is contended that suitably worded condition requiring restoration at the end of the temporary period would be reasonable and enforceable². For example, a condition could be imposed requiring the removal of the hardstanding and the land shall be restored in accordance with a scheme and programme previously submitted to and approved in writing by the Council. I am however concerned about the nature and scale of the hardstanding and its potential visual effect upon the surrounding area even during this limited period. I do not consider conditions alone would address my concerns.
22. Having regard to all the evidence presented on this topic and the particular circumstances of this case including the current public health emergency and the impact of my decision on the business, I am of the firm opinion that a five-year temporary planning permission is unjustified. Refusal of a temporary planning permission would be a proportionate approach to the legitimate aim of protecting the environment, and it would have no greater impact on the appellant/business than would be necessary to address the wider public interest.
23. On the particular circumstances of this case, it is therefore concluded that the points raised in support of the development are insufficient to clearly outweigh the harm identified so that very special circumstances exist even for a grant of permission for a limited period. I shall consider an appropriate extension of the compliance period sought on ground (g) next.

Ground (g)

24. The challenge is that the period specified in the notice falls short of what should reasonably be allowed. The steps required to comply with the notice specify removal of the hardstanding and all resulting rubble and waste materials and reinstate the land to its previous condition. All these works will require some planning and building work.
25. The appeal parties made additional comment given the current public emergency and the response by the Government including travel restrictions. I am grateful for all these comments. Having regard to the nature of the work required by the corrected notice and the current circumstances, I agree a period of 12 months from the date of my decision is a reasonable compromise. Given the planning difficulties and my findings elsewhere, this is a proportionate response.
26. For all the above reasons, I find that a reasonable period of compliance is 12 months and I shall vary the notice. The appeal on ground (g) succeeds.

Formal decision

27. It is directed that the enforcement notice be corrected and varied by the following:
- 1) Deletion of all the text in section (3): The matters which appear to constitute a breach of planning control, and the substitution therefore by the following text:

"Without planning permission, the construction of a hardstanding";

² Appendix 2 to the appellant's statement includes Secretary of State's decision in appeal ref: APP/M0655/A/12/2177362, but this case related to travelling showpeople site and has a materially different planning policy context.

- 2) Deletion of all text in section (5): What you are required to do and the substitution therefor by the following requirements:
 - 1) *Remove the hardstanding,*
 - 2) *Remove all resulting rubble and waste from the land, and*
 - 3) *Restore the land to its previous condition before the breach occurred;*
 - 3) Deletion of the text "three calendar months" in section (6): Time for compliance and substitution therefor by the number and text "*12 calendar months*".
28. Subject to the above correction and variations, the appeal is dismissed and planning permission refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

A U Ghafoor

INSPECTOR