



Appeal Decisions

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: 03 July 2020

Appeal A: Ref APP/H1515/C/19/3222388

Springvale Farm, Goatswood Lane, Navestock, Essex RM14 1HE

- 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 Michael McGarr (Cassidy Group Ltd) against an enforcement notice issued by Brentwood Borough Council.
 - The enforcement notice was issued on 10 January 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of engineering or other operations on the Land, including but not limited to the importation of materials to the land and the creation of an area of hard-standing in the approximate position shown in green chevrons on the attached plan and the operation of an earth bund on the north-west perimeter boundary on the Land in the approximate position shown in blue on the attached plan.
 - The requirements (and periods of compliance) of the notice are to:
 1. Cease the importation and laying of hardcore on the Land (1 day).
 2. Remove the hardcore laid in the ground in the approximate position shown shaded in green chevrons on the plan attached hereto from the Land (6 months).
 3. Cease the importation and laying of earth/soil on the Land (1 day).
 4. Remove the earth bund laid on the Land in the approximate position shown in blue on the attached plan (6 months).
 5. Remove all matter arising from compliance with Steps 2 and 4 above from the Land to an authorised site of disposal (6 months).
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not 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 have lapsed.
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Appeal B: Ref APP/H1515/W/19/3237394

Appeal C: Ref APP/H1515/W/19/3237765

Springvale Farm, Goatswood Lane, Navestock RM14 1HE

- Appeals B and C are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant planning permission.
 - The appeals are made by Mr Ben Chambers against the decisions of Brentwood Borough Council.
 - Appeal B relates to application Ref 19/00560/FUL, dated 15 April 2019, which was refused by notice dated 4 July 2019. The development proposed is erection of a beef finishing unit.
 - Appeal C relates to application Ref 19/00600/FUL, dated 26 April 2019, which was refused by notice dated 4 July 2019. The development proposed is erection of a beef finishing unit.
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Decisions

1. It is directed that the enforcement notice be corrected by:

- Removing “(3) CASSIDY GROUP LTD, Oakhurst Farm, Coxtie Green Road, Brentwood, Essex, CM14 5RP” from the list of notice recipients on its front page;

and varied by:

- Substituting “cross-hatching” for “green chevrons” in paragraph 3;
 - Substituting “cross-hatching” for “green chevrons” in paragraph 5;
 - Substituting “fully shaded in blue” for “as shown in blue” in paragraph 3;
 - Substituting “fully shaded in blue” for “as shown in blue” in paragraph 5;
 - Removing the plan attached to the notice and replacing it with the plan attached to this Decision.
2. Subject to this correction and variations, Appeal A is dismissed and the enforcement notice is upheld.
3. Appeal B is allowed and planning permission is granted for erection of a beef finishing unit at Springvale Farm, Goatswood Lane, Navestock RM14 1HE in accordance with the terms of the application, Ref 19/00560/FUL, dated 15 April 2019, and the plans submitted with it, subject to the conditions in the attached schedule.
4. Appeal C is allowed and planning permission is granted for erection of a beef finishing unit at Springvale Farm, Goatswood Lane, Navestock RM14 1HE in accordance with the terms of the application, Ref 19/00600/FUL, dated 26 April 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

5. The Council has confirmed that the enforcement notice in Appeal A was incorrectly issued in respect of Cassidy Group Limited of Oakhurst Farm, Coxtie Green Road, Brentwood, Essex, CM14 5RP which is a separate and unconnected company to the appellant company. I am correcting the notice accordingly, being satisfied that no injustice would be caused by the correction.
6. The Council took injunctive action as regards the alleged breach of planning control in Appeal A, with an Interim Injunction (II) Order being obtained at the High Court on 17 January 2019. Continuation of the II was obtained on 24 January 2019 and 14 March 2019. The main parties agreed to a Consent Order (CO) on 26 June 2019 whereby Mr Ben Chambers undertook to reduce the height and bulk of the bund and, within 3 months of my Decisions on these appeals, to remove around 3,500 square metres of hardcore from an area shown by cross-hatching on a plan attached to the Order. Noting the agreement in the High Court I am satisfied that no injustice would be caused to the parties by substituting the agreed CO plan for the plan attached to the issued notice, and by making corresponding changes to the wording of the allegation and requirements.

7. At the time of my site visit, the bund had been entirely removed. The Council in its submissions allege that, subsequent to the CO, material from the bund had been added to the land outside of the cross-hatched area of the plan. It has provided photographs to demonstrate that, as a result, land levels have been raised to the south of the internal access road. However, I must determine the enforcement appeal on the basis of matters said to have occurred as the breach of planning control on the date the notice was issued.
8. The appellant has made comments, in addition to those made pursuant to grounds (b) and (d) upon which Appeal A is proceeding, to the effect that works undertaken did not constitute a breach of planning control. As these comments are in essence ground (c) arguments, and as the Council has addressed them, I will deal with them together with my consideration of the ground (b) appeal and without any injustice caused to the parties.
9. Pre-commencement conditions in respect of Appeals B and C have been agreed with the appellant as required by S100ZA of the Town and Country Planning Act 1990.

Appeal A Grounds (b) and (c)

10. I give significant weight to the evidence in Mr Holmes' witness statement that part of the site had been laid with hardcore in 1983. It is also consistent with the evidence from Mrs Farthing that her horse's foot was injured from contact with the imported material having strayed into that area in the early 2000s. Mrs Farthing further submits that, having moved her horse to the appeal site in 2000, the area of land containing the hardcore was "totally overgrown with vegetation and has been for as long as I can remember".
11. The aerial photograph of the site taken in 2014 shows the land to be verdant with vegetation. The appellant says that the outline of a barn, demolished by the previous owners of the site, can be seen in that photograph although that is not in any way clear to me. Nevertheless, I accept that there was some form of hardcore-based hardstanding in the area historically. But what is clear to me from all the above evidence is that, by the time the appellant carried out works subject to the Council's enforcement action in January 2019, the physical characteristics of the land were strongly influenced by the organic and vegetative nature of its surface to the extent seen in the aerial photography.
12. The appellant has said that work was carried out to repair, maintain and level the existing hardstanding as indicated in the cross-hatched area of the plan attached to the CO. From my assessment of the Council's photographs, and from my site visit, this area has been covered by a significant amount of compacted hardcore topped with asphalt/road planings material. In my judgement, notwithstanding the historic hardcore beneath and further to my comments in the preceding paragraph, the appeal work is new operational development which has resulted in a physical alteration of the land with some degree of permanence.
13. Similarly, before the appeal works the pre-existing earth bund on the north-west boundary can be seen from the Council's photographs to be of modest size comparable in height to the top of the paddock fence. A photograph taken by the Council on 12 December 2018 shows that the appeal works created a bund which had been considerably heightened along its length, and several metres high. The appellant says that works had been

undertaken to increase the height of the original bund for security reasons. Nevertheless, the substantial works to the bund and considerably increased height and size was new operational development which resulted in a physical alteration of the land with some degree of permanence.

14. The appellant says that the materials for the works they carried out were taken from Winterleigh Hall Farm, beyond the appeal site. Therefore, even on the appellant's case, as a matter of fact the enforcement notice is correct in referring to the importation of materials.
15. Therefore, I find that the matters stated in the notice have occurred, and accordingly ground (b) fails. A ground (c) appeal would only succeed were the appellant to satisfy me on the balance of probabilities that those matters do not constitute a breach of planning control. For the reasons I have given above I am of a view that those matters constitute operational development under section 55 of the Act. The appellant has said that the matters do not represent development under that section, but has not explicitly explained why. Conversely, he has also said that the matters are development which benefit from permission under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). However, no substantive case has been made as to how the development is permitted by the Order or how any limitations or conditions thereunder apply. As the burden of proof is on the appellant to satisfy me of this legal ground, it does not succeed.

Appeal A Ground (d)

16. Section 171B of the 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. Were an appeal to be successful under this ground, the appellant needs to satisfy me on the balance of probabilities that the operations were substantially completed more than 4 years before the issue of the enforcement notice.
17. As I have set out, the works undertaken at the site constitute new operational development which took place in 2018. As this is within 4 years of the issue of the notice on 10 January 2019, the appeal under ground (d) fails.

Appeals B and C

Main issues

18. The main issues in respect to each of these appeals are:
 - whether the proposed beef finishing units are inappropriate development in the Green Belt;
 - the effect of the beef finishing units on the character and appearance of the area; and
 - the effect of the beef finishing units on the living conditions of nearby occupiers, as regards outlook and general disturbance.

Reasons

Green Belt

19. Paragraph 145 of the National Planning Policy Framework (the Framework) says that the construction of new buildings is inappropriate in the Green Belt. Exceptions to this are buildings for agriculture and forestry.
20. The proposals are explicitly for an agricultural use, and would be used to house the herd of cattle that are temporarily housed within straw compounds on the area of hardcore which is the subject of Appeal A. I have no substantive evidence to lead me to the conclusion that the buildings would not be used for agriculture. Further I accept the conclusion of the Agricultural Justification Statement (AJS) by Foxes Rural Consultants that there is a genuine and immediate agricultural demand for the buildings including for the welfare of the animals on site.
21. Therefore, the proposed buildings would not be inappropriate development in the Green Belt, and the Framework does not set out any limiting criteria in that respect relating to size or any other matters including the viability of the agricultural business. Accordingly, there would be no conflict with Saved Policies GB1 and GB2 of the Brentwood Replacement Local Plan (2005) (LP) which together seek to protect the Green Belt from inappropriate development. There would also be no conflict with the Framework.

Character and appearance

22. The local setting around Navestock Common in the vicinity of the appeal site is moderately rural in nature, with nearby fields and stables as well as a golf course. There is also a significant number of nearby commercial and industrial units, including within Springvale Farm. Dwellings are sporadic and there is a mobile home park. The local character is therefore somewhat mixed.
23. The appeal buildings would be of a simple partly-open agricultural design and clad in brown, which would cause them to fit in with the partially rural surroundings against the backdrop of the structures already within Springvale Farm without causing an unacceptable sense of overdevelopment or other visual harm. The Council's assessment of character and appearance in its officer reports is very limited, other than coming to a view that the buildings would be too large for the number of cattle currently on site (notwithstanding that the appellant has stated an intention to expand the numbers). Despite the reasons for refusal however, the officer reports do not explicitly state to any substantive degree how the size, scale or siting of the buildings would cause harm to character and appearance. In the absence of substantive evidence to the contrary, and using my own judgement, I accept the finding of the AJS that the scale, design and materials of the proposals are commonplace for that of agricultural buildings in the district and I do not find that harm would be caused to local character and appearance subject to a condition requiring a landscaping scheme to be approved by the Council. Accordingly, there is no conflict with Saved Policies GB14 and CP1 of the LP which together seek to ensure that agricultural buildings are well designed and protect the character and appearance of places.

Living conditions, nearby residential occupiers

24. The reasons for refusal say the proposed buildings would have an unacceptable detrimental impact on the occupiers of dwellings fronting Horseman Side due to an overbearing effect and general disturbance. Again, there is very limited evidence from the Council as to how it considers this harm would be caused. The residential dwellings along Horseman side are sporadic and there is a significant distance between them and the proposal site, with stables and industrial works being closer to the appeal site than the dwellings. Further, the odour impact assessment for the proposals finds that there would be a negligible effect on the nearest residential properties. As the assessment was contingent on no manure or slurry being stored outside of the buildings, I am imposing a condition to that effect to protect nearby occupiers from odour from such sources.
25. Therefore, I find that the proposed developments would cause no harm to the living conditions of nearby residential occupiers and as such the proposals are not in conflict with Saved Policy CP1 of the LP which seeks to ensure that the amenities of nearby occupiers are protected.

Other Matter

26. The Parish Council has raised concerns concerning highway safety, in that it says that Goatswood Lane is too narrow to accommodate Long Goods Vehicles. However, the Highways Authority has no such concerns or objections to the proposal and given their expertise on the subject I find that there would be no harm to highway safety from the proposals.

Conclusion on Appeals B and C

27. As the proposals would accord with the development plan when taken as a whole, and there no other considerations which outweigh this finding, the appeals succeed and I grant planning permission subject to conditions.
28. In addition to commencement conditions, I am attaching conditions to control the risks from any contaminated land on the site and to ensure that the proposals have appropriate drainage arrangements. To protect the character and appearance of the area, I am attaching a condition to each permission requiring approval by the Council of a landscaping scheme. To protect the living conditions of neighbouring occupiers, I am attaching a condition to each permission preventing the external storage of manure or slurry.

Conclusions

29. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with a correction and variations.
30. For the reasons given above I conclude that appeals B and C should be allowed.

Andrew Walker

INSPECTOR

Schedule of conditions - APP/H1515/W/19/3237394

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.
- 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.
- 4) No building hereby permitted shall be occupied until drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 5) There shall be no external storage of manure or slurry on the site.

Schedule of conditions - Ref APP/H1515/W/19/3237765

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- 5) There shall be no external storage of manure or slurry on the site.



Plan

This is the plan referred to in my decision dated: 03 July 2020

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

Land at: Springvale Farm, Goatswood Lane, Navestock, Essex RM14 1HE

Reference: APP/H1515/C/19/3222388

Scale: Do not scale

