



Appeal Decision

Site visit made on 21 July 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2020

Appeal Ref: APP/G5180/C/3237092

Land at End Kennel Block (South East) and Land adjoining Highams Court, Layhams Road, Keston BR2 6AR

- 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 Russell Neil Sparkes against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice, numbered 18/00340/ENF, was issued on 16 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from rough grass land within the green belt to the commercial use of the site as a scaffolding yard.
 - The requirements of the notice are:
 1. Cease the unauthorised use of the any part of the land for the storage of scaffolding materials.
 2. Remove from the land all vehicles and equipment brought on to the land for the purpose of that use.
 3. Leave the site in a clean and tidy condition.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - The deletion of requirement 3 in its entirety;
 - Substituting the site plan attached to the issued enforcement notice with the one attached to this decision.
2. It is directed that the enforcement notice is varied by:
 - The deletion of 'one' in the period for compliance and substitution with 'three'.
3. Subject to the corrections and 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 1990 Act as amended.

Matters concerning the notice

4. I have a duty to try to get the notice in order. The requirement to leave the site in a clean and tidy condition is imprecise and requires a subjective judgement, such that it would not be clear how to comply with it. However, I am satisfied that the deletion of this requirement does not cause injustice to the parties.

The appeal on ground (b)

5. The ground of appeal is that the matters stated in the notice have not occurred. The burden of proof lies with the appellant to make out his case, on the balance of probabilities. The appellant's case is that the red line plan attached to the enforcement notice includes a commercial dog kennels which are lawful and should be excluded from the enforcement notice plan. I saw on my site visit that the scaffolding yard is contained by a close boarded fence and is physically and functionally separate to the use of the adjacent land as dog kennels. The aerial photograph provided in appendix 3 of the appellant's statement indicates the extent of the site.
6. The Council agrees that the whole site is not being used for a scaffolding business, but asserts that as it forms part of the whole title which is in the same ownership it is appropriate to identify the entire wider site on the enforcement notice plan. It is not the case that the land is in a mixed use with the dog kennels and therefore the enforcement notice plan should be restricted to the separate planning unit in use as a scaffolding yard.
7. No injustice would be caused by deleting the plan attached to the notice and substituting a plan showing a reduced area, so that it includes only the scaffolding yard and not the dog kennels. I have used the aerial photograph as the basis for the substitute plan so I have included this as well as the substitute plan. To this extent the appeal on ground (b) succeeds.

The appeal on ground (a) and the deemed application

8. The ground of appeal is that planning permission should be granted. The site is within the Green Belt and having regard to the reasons for issuing the notice, the main issues are as follows:
 - Whether the development is inappropriate development in the Green Belt;
 - If the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development

9. Policy 49 of the Bromley Local Plan 2019 (BLP) sets out the policy for Green Belt. It sets out the forms of development that are not inappropriate development, including the redevelopment of previously developed land.
10. The National Planning Policy Framework (the Framework) sets out the Government's policy in relation to Green Belts. Inappropriate development is, by definition, harmful and should not be approved other than in very special circumstances. Substantial weight is to be given to any harm to the Green Belt.

Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

11. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 146 (g) states that a material change in the use of the land is not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it. It gives examples such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds.
12. The aerial photographs submitted with the appellant's statement indicate that the site was previously laid to grass/vegetation. The site has been divided into several separate fenced compounds, with an internal open space giving access to each compound. Within most of the compounds scaffolding and other equipment is stored, although one compound contained a number of vehicles and other items but no scaffolding was visible. Scaffolding is stored on makeshift racks, often to a height greater than that of the perimeter fence. A number of vehicles including heavy goods vehicles were parked in some of the compounds or within the open part of the site at the time of my visit.
13. In spatial terms the use has significantly reduced the openness of the site in terms of the storage of scaffolding and materials, vehicles, equipment and internal subdivision into separate compounds. It has also affected the openness of the site in visual terms. This is apparent in views from the surrounding open countryside, and from the entrance to the site from Layhams Road. While the site is surrounded by a fence which is not attacked by the enforcement notice, the scaffolding and associated equipment and vehicles are clearly visible above the fence line.
14. The development does not therefore preserve the openness of the Green Belt. It has also resulted in an encroachment of development into the countryside and thereby conflicts with the related purpose of including land within the Green Belt. As a result, it is inappropriate development in the Green Belt.
15. The appellant suggests that a condition could be imposed to limit the height of the scaffolding to three metres. However, I am not satisfied that this would overcome the spatial and visual harm to openness that I have identified.
16. The appellant argues that the site is previously developed land as it includes the built form of Highams Court Kennels and dog runs. However, the aerial photographs submitted with the appeal statement indicate only a small area of surfacing, possibly a driveway, and the rest of the site appears as open grassland. Even if the land falls meets the definition of previously developed in Annex 2: Glossary to the NPPF, the definition makes it clear that it should not be assumed that the whole of the curtilage should be developed.
17. In terms of the exceptions to the strict control over development in the Green Belt, paragraph 145 (g) of the Framework lists the partial or complete redevelopment of previously developed land, where it would not have a greater impact on the openness of the Green Belt than the existing development. I have already concluded that the development does not preserve the openness of the Green Belt, and therefore even if it were to be considered previously developed land, it would still be inappropriate development.

Other considerations

18. The appellant states that the site is needed by several small businesses. Furthermore, scaffolding yards are scarce as they are not generally found on traditional industrial estates but are usually on diversified farms. I attach moderate weight to the need for the site, but I have seen no firm evidence that there is a lack of alternative premises in the area.
19. The appellant also argues that it is previously developed land and is therefore appropriate for such a use, but for the reasons set out above I have already found that the site was largely undeveloped and I have seen no evidence that it formed part of the curtilage of a developed site. I therefore give this consideration limited weight.
20. There are commercial and residential uses in the vicinity of the site, as well as a travelling showpeople's yard. However, the area has a rural character and the existence of other development and uses does not indicate the acceptability of this development in the open countryside.
21. The appellant suggests that a condition could be imposed giving temporary permission. The Planning Practice Guidance (PPG)¹ advises that the circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development, where it is expected that the planning circumstances will change at the end of that period, or to enable a temporary use of vacant land prior to a longer-term proposal coming forward. There is no evidence that any of those circumstances exist in this case.
22. The Council and a local resident have also raised concerns with the level of commercial activity at the site, which gives rise to noise and disturbance, particularly during early mornings and in the evenings, with a loss of privacy due to overlooking from lorry drivers. I note however that these concerns were not specified in the reasons for issuing the notice.

Green belt balance

23. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I give limited to moderate weight to the considerations put forward by the appellant, but that falls far short of clearly outweighing the substantial weight that must be given to harm to the Green Belt. The very special circumstances necessary to justify development do not, therefore, exist. It is therefore in conflict with BLP Policy 49 and the Framework.

Conclusion in relation to Ground (a)

24. For the reasons given above and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed application should be refused.

The ground (g) appeal

25. This ground of appeal is that the period for compliance with the notices is unreasonably short. The appellant requests a 12 month compliance period as

¹ Paragraph: 014 Reference ID: 21a-014-20140306 Revision date: 06 03 2014

one month is insufficient for the affected businesses to find alternative premises.

26. I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interests of the appellant. I consider that one month is too short to allow the affected businesses to look for alternative premises, and that three months would be an appropriate balance.
27. To this limited extent the appeal on ground (g) succeeds and I will vary the notice accordingly.

N Thomas

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by N Thomas MA MRTPI

Land at: Land at End Kennel Block (South East) and Land adjoining Highams Court, Layhams Road, Keston BR2 6AR

Reference: APP/G5180/C/3237092

Scale: Not to scale



