



Appeal Decision

Site visit made on 21 July 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/W3710/C/20/3245931

The land and buildings known as Site 46B001, Park Lane, Galley Common, Nuneaton, Warwickshire

- 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 Ms Natalie Leonard against an enforcement notice issued by Nuneaton & Bedworth Borough Council.
- The enforcement notice was issued on 3 January 2020.
- The breach of planning control as alleged in the notice is without planning permission the laying of an area of hardstanding in Green Belt.
- The requirement of the notice is: -
Remove all rubble forming the area of hardstanding from the Land to the Council's satisfaction.
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.

Summary Decision: The appeal is dismissed and the enforcement notice upheld with corrections.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. The appellant's statement of case identifies what she considers are the failings of the notice. She considers that the enforcement notice is so imprecise that it is unenforceable and that it has not been served on Mr John McNeil, her partner, who has confirmed to the Council that he deposited some hardcore on the site.
3. In this case the notice itself describes the site address, and that the alleged breach of planning control is the laying of an area of hardstanding. The plan attached to the enforcement notice shows the boundaries of the land and the requirements of the notice are to remove all rubble forming the area of hardstanding. That plan does not indicate where on the land the area of hardstanding has been formed.
4. Nevertheless, taking into account the requirement of the notice, it is clear that the area of hardstanding that constitutes the alleged breach has been formed from rubble. To ensure that there is consistency between the description of the alleged breach and its requirement I intend to add the words '*formed of rubble*'

after the word '*hardstanding*' in the description. I also intend to delete the words '*in Green Belt*' as they do not relate to an act of development and they are unnecessary. I can carry out these corrections without injustice to the parties.

5. The scope of the notice is limited by section 173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is to restore the land to its previous condition. As the appellant's partner has admitted to depositing the hardcore/rubble onto the land the appellant, through her partner, will know how much material was used to create the hardstanding. As such, the wording '*to the Council's satisfaction*' at the end of the requirement is not necessary and I intend to delete it. I can carry out these corrections without injustice to the parties.
6. Section 172(2) of the 1990 Act requires an enforcement notice to be served on the owner and the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. The appellant has not appealed on ground (e), that copies of an enforcement notice were not served as required by section 172 of the 1990 Act. Nonetheless, she has stated that it was not served on Mr John McNeil who confirmed to the Council that he deposited some hardcore on the site.
7. As the evidence before me indicates that she is the owner of the land affected by the enforcement notice and that Mr McNeil is not named on the land registry title the Council have complied with section 172(2) of the 1990 Act by serving a copy of the enforcement notice on the appellant.
8. Even if Mr McNeil could be treated as a person required to be served with a copy of the enforcement notice section 176(5) of the 1990 Act provides that failure to serve may be disregarded if the appellant nor the person not served have been substantially prejudiced by the failure to serve him. In this case the appellant has been able to submit an appeal against the enforcement notice and argue it fully in the course of these appeal proceedings. Moreover, the appellant has stated that Mr McNeil is her partner and the evidence before me indicates that he resides at the appellant's address. It cannot, therefore, be said that the appellant nor Mr McNeil has suffered any prejudice as a result of any failure to comply with the rules concerning service. There is no suggestion that any other person may have been prejudiced. Even if there had been an appeal on ground (e) I conclude, that in the circumstances of this case any failure by the Council in terms of service of the enforcement notice may be disregarded.
9. The reasons for issuing the notice state that it appears to the Council that the breach of planning control has occurred in the last ten years. However, section 171B(1) of the 1990 Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, 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.
10. As the alleged breach relates to operational development the reasons for issuing the notice should state that the breach of planning control has occurred in the last four years. The appellant has not submitted a ground (d) appeal and it is clear from the evidence before me that the operations on the appeal land that are the subject of the alleged breach were substantially completed in

2019. As such, I consider that there would be no injustice to the parties if I deleted the word 'ten' and replace it with 'four' between the words 'last' and 'years' within the reasons for issuing the notice.

11. Notwithstanding all of the above, if read in a straightforward way, and not forensically, the alleged breach is expressed in a manner and form that is understandable. The requirement relates directly back to the operational development and there is a period for compliance. My conclusion is that the notice tells the recipient fairly what she has done wrong and what she must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds available in an appeal.
12. For the reasons given above, I conclude that the enforcement notice is valid and that no injustice would be caused by correcting the errors and misdescriptions in accordance with my powers under section 176(1)(a) of the 1990 Act.

The ground (b) appeal

13. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. The appellant considers that the whole site is a hardstanding and 'made-up' ground due to it being previously developed land and that she has not formed an area of hardstanding across the whole of the land. I acknowledge that the site is adjacent to a former colliery and a railway. Moreover, there are concrete bases on the site that appear to relate to former structures that were on the land.
14. I observed that the appeal site appears to mainly comprise of compacted soil and that there is some evidence of relatively small pieces of building materials, such as brick and tile, within those compacted areas. Nevertheless, there is also a quite extensive area of rubble/hardcore that has been laid to form an area of hardstanding between the boundary with Park Lane and one of the concrete bases. This hardstanding is formed of relatively large individual pieces of rubble and compacted soil does not appear to form part of it. Furthermore, concrete does not appear to bind the rubble together. As such, it has a significantly different appearance to other parts of the land, and it is clearly distinguishable to those other parts.
15. There is no dispute that hardcore has been deposited on the site. The alleged breach relates to the laying of an **area** of hardstanding (my emphasis). Moreover, as stated above, the requirement of the notice relates to the removal of rubble and I intend to correct the notice to add the wording '*formed of rubble*' to the description of the alleged breach.
16. Therefore, as a matter of fact, an area of hardstanding formed of rubble has been laid on the land and the appeal on ground (b) does not succeed.

The ground (c) appeal

17. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control. In an appeal on this ground the appellant has to demonstrate on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control.
18. The appellant's case is that the works carried out are repairs to an existing hardstanding and are de minimis and therefore do not amount to development.

- In the alternative, she considers that the works are permitted development under Class B, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) as a means of access to a highway.
19. The meaning of development as set out in section 55(1) of the 1990 Act includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The question as to whether the development constitutes an engineering operation is an evaluative one which requires an exercise of planning judgement.
 20. The appellant has provided evidence to support her case that the whole of the land is 'made-up' ground and is hardstanding. As stated above, the 'made-up' ground appears to consist of compacted soil with relatively small pieces of building materials in it and the concrete bases of former structures. I have found within the ground (b) appeal that there is an area of hardstanding formed of rubble that has a significantly different appearance to other parts of the land, and it is clearly distinguishable to those other parts. This area of hardstanding covers a sizeable part of the land.
 21. The deposition of the rubble/hardcore and its subsequent spreading and compaction to lay it as an area of hardstanding would have, more likely than not, involved plant and machinery. Part of the hardstanding that has been formed from the deposition of the rubble slopes up from Park Lane and it is not clear if the ground levels of this part of it have been regraded in any way. Nevertheless, the spreading and compaction works would have required an element of pre-planning and they have materially altered the appearance of that part of the land. Whatever the justification claimed for the laying of the hardstanding, taking into account all of the above, the alleged breach amounted to an engineering operation within the meaning of development in section 55(1) of the 1990 Act. Furthermore, given all of the above, the works are not so insignificant that they are 'de minimis'; that is to say they could be disregarded altogether. As such, planning permission is required.
 22. Class B, Part 2, Schedule 2 (Class B) of the GPDO states that '*the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)*' is permitted development (PD).
 23. There is no evidence before me as to whether Park Lane is a classified or trunk road. Nevertheless, given that Park Lane is a narrow highway with passing places it is more likely than not that it is neither a classified nor a trunk road. Class B allows the construction of a means of access to any development that would be permitted by Schedule 2, with the exception of development permitted under Class A of Part 2. Class A of Part 2 relates to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Therefore, even though the appellant has stated that the access is required to facilitate the completion of the fencing works the formation of a means of access is not PD in connection with Class A of Part 2.
 24. Nonetheless, the scope of PD rights under Schedule 2 is extensive and a wide range of new buildings and other development benefits from deemed permission, subject to limitations. The rights granted under Class B are clearly intended to supplement the rights granted in other Classes in Schedule 2 to

enable the construction of a means of access as may be required to serve new development. The appellant has stated that a car boot sale would be one way of gaining income from the land, that there are other temporary uses that could be considered and that she considers that the site has an extant community use. I note that the Council states that the community use of the former scout hut has been abandoned.

25. In any case, any means of access must be '*required*' to serve a development that is permitted by any class in Schedule 2, except class A of Part 2. The existing access drive which is adjacent to the area of hardstanding appears to provide a means of access to the appeal site. Taking the ordinary meaning of the word, it seems to me that there must be a reasonable degree of need for the access to be '*required*'. There is nothing to indicate that the existing access would be inadequate to serve the proposed developments of temporary uses, including car boot sales, or a community use, if it is still extant. Therefore, whilst a new access may be desired by the appellant, I cannot conclude that it is required in order to serve the proposed or potentially extant developments. In that regard I am not satisfied that the development falls within the scope of Class B.
26. I consider that the development that has been carried out comprises an engineering operation firmly falling within the scope of Section 55(1) of the 1990 Act. This engineering operation does not benefit from PD rights. Express planning permission is required for the matters alleged and it has not been obtained. On the balance of probabilities, the development constitutes a breach of planning control. Therefore ground (c) must fail.

The ground (a) appeal and deemed planning application

Main Issues

27. The main issues are: -

- Whether the development constitutes inappropriate development in the Green Belt, having regard to the effect on the openness and purposes of the Green Belt, the development plan and the National Planning Policy Framework (the Framework);
- Whether the harm by reason of inappropriateness, and any other harm, clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the development.

Reasons

28. The appeal site comprises a piece of land that contains concrete bases of former structures, including a scout hut, and in places fencing forms its boundary. There is a railway line adjacent to the northern boundary of the land and a recreation ground is to the south. On the opposite side of Park Lane there appears to fields/paddocks.

Inappropriate development

29. The appeal site lies within the Green Belt. Policy DS7 of the Borough Plan (BP) states, amongst other things, to ensure the remaining Green Belt across the borough continues to serve its fundamental aim and purpose, and maintains its essential characteristics, it will be protected by restricting development to only

that which is considered by national planning policy as not inappropriate Green Belt development, except where very special circumstances can be demonstrated. This policy is consistent with paragraph 146 of the Framework. That paragraph sets out that certain other forms of development, including engineering operations, are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

30. I have found, above, that the development that has been carried out comprises an engineering operation. The appellant considers that given the site lies on the edge of a built-up urban area and is completely surrounded by a railway line and a sports ground with pavilion and other parkland that the development cannot physically encroach into the countryside. She also considers that a visual encroachment is not possible as the site has been covered in hardstanding for a considerable length of time and because the site can be screened by lawfully erected 1.8m high fence except for the site access.
31. The concept of openness is one that has both a spatial aspect and a visual one. The absence of visual intrusion does not in itself mean that there is no impact on openness. Likewise, that does not mean that openness has no visual dimension.
32. The laying of the hardstanding formed of rubble has introduced an engineered form of development that has a distinct appearance when compared to the compacted soil and concrete bases on other parts of the land. Some of the area of hardstanding could be screened by a similar fence to that on the boundaries of the land. However, the part that is adjacent to Park Lane would still be highly visible to users of the highway. There is a railway adjacent to the appeal land and there is built development accessed off some parts of Park Lane.
33. Nevertheless, in the immediate vicinity of the development there are fields/paddocks and recreational open space and Park Lane is mainly bounded by hedges and landscaping. The hardstanding appears in sharp contrast and incongruous to these landscaped open areas that are close to it. I acknowledge that the hardstanding due to the physical nature of the works has a limited spatial aspect. Nonetheless, in my judgement, the visual impact of the works causes harm to the openness of the Green Belt. Whilst, that visual impact is localised the openness of the Green Belt is not preserved.
34. The landscaping extending along parts of Park Lane and the boundary of the railway line, the fields/paddocks and recreational open space and the narrow width of Park Lane itself impart a rural, countryside character to this part of the Green Belt. Furthermore, this landscaping limits views of buildings and the railway development in the vicinity of the site. By introducing an engineered form of development that has a distinct appearance into the above context, I consider that it also amounts to encroachment into the countryside. This is in conflict with one of the purposes of including land within the Green Belt set out at paragraph 134 of the Framework.
35. Therefore, the development does not preserve the openness of the Green Belt and conflicts with one of the purposes of including land within it. Accordingly, it amounts to inappropriate development in the Green Belt when considered against paragraph 146 of the Framework.

Other considerations

36. The appellant argues that the area is in need of investment and that the Council needs to work proactively with landowners and other bodies to stop anti-social behaviour in the area such as the arson attack on the nearby sports pavilion. She also states that a long-term use for the site needs to be found. However, there is no substantive evidence which demonstrates how the development is required to facilitate a proposed use.
37. Although raised under ground (f), the appellant has stated that as an alternative to removing the rubble from the site it could be reformed into a deposit of hardcore at the entrance of the site to prevent unauthorised encampments and fly tipping. I have taken this to mean that the hardcore would be moved and formed into a bund parallel to Park Lane. The bund would assist in deterring unauthorised encampments and fly tipping on the land. In addition, reusing the material would mean that there would be less vehicular movements associated with its reuse than associated with it being totally removed from the site.
38. Nevertheless, given that the material to be used for the bund would be the same as that used in the hardstanding it would still have an engineered form and it is likely that it would be highly visible from Park Lane. As such, it would have a similar visual impact to the hardstanding. However, other forms of security measures that would be more in keeping with the rural character of the area could also deter unauthorised encampments and fly tipping.
39. Overall, I give these considerations moderate weight.

Conclusion – ground (a) appeal and deemed planning application

40. The development is inappropriate development in the Green Belt. At paragraph 143, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 of the Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
41. For the reasons given above, the other considerations in combination do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the development conflicts with BP Policy DS7 and the Framework. The development conflicts with the development plan as a whole and material considerations do not indicate that it should be determined other than in accordance with the development plan.
42. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the deemed application.

The ground (f) appeal

43. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either

- (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
44. The notice does not specify which of the two purposes it seeks to achieve. Nevertheless, the requirement is to remove all of the rubble from the land that forms the hardstanding. Essentially, it requires the removal of all works that have formed the breach of planning control alleged in the notice. I am satisfied therefore that the purpose of the notice is to remedy the breach of planning control.
45. The appellant argues that the requirements of the notice could be amended to put the deposit of hardcore material back at the entrance of the site to prevent unauthorised encampments and fly tipping. I have considered this proposed alternative as part of the ground (a) appeal. The appellant also considers that this alteration would constitute an '*other means of enclosure*' within Class A, Part 2, Schedule 2 of the GPDO. Nevertheless, the appellant's argument is not supported by details including the position/siting of the deposit and its height, or any drawings of how the development could be altered to form a means of enclosure. Consequently, without details or drawings I am unable to fully assess whether the changes being proposed would be in line with permitted development tolerances. Neither am I able to vary the notice to the necessary level of precision in this respect.
46. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

Overall Conclusion

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

Formal Decision

48. It is directed that the enforcement notice be corrected by: -
- adding the words '*formed of rubble*' after the word '*hardstanding*' in the description of the alleged breach;
 - deleting the words '*in Green Belt*' from the description of the alleged breach;
 - deleting the words '*to the Council's satisfaction*' at the end of the requirement;
 - deleting the word '*ten*' and replace it with '*four*' between the words '*last*' and '*years*' within the reasons for issuing the notice.
49. Subject to these corrections the appeal is dismissed and 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.

D. Boffin

INSPECTOR