



Appeal Decision

Site visit made on 3 August 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Appeal Ref: APP/W1525/C/19/3232545

Land South of Roxwell Road, Writtle, Chelmsford, Essex CM1 3SA

- 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 Martin David Simpson against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 4 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for storage.
 - The requirements of the notice are:
 - i. Cease the use of the land for storage.
 - ii. Remove from the land all items stored including all touring caravans, motor vehicles, boats, trailers and any other item not used in connection with the lawful use of the land for agriculture.
 - iii. Demolish and otherwise scrape clear from the land the hardstanding shown outlined in blue at the approximate location on the plan attached to the notice.
 - iv. Remove from the land all material and debris resulting from the action taken at step (iii).
 - v. Restore the land affected by the works carried out at steps (i),(ii),(iii) and (iv) to its former condition, by seeding with grass seed.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(d),(f)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the words "for storage" in paragraph 3. and substituting "to a mixed use of agriculture and non-agricultural storage" and by inserting the words "non-agricultural" before "storage" in paragraph 5.i.
2. Subject to those corrections, 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.

Procedural Matters

3. The original Appeal Form specified that an appeal was being brought on grounds (f) and (g) only. The appellant subsequently confirmed that a case was also being made on ground (d) on the basis that at the time the notice was issued it was too late to take enforcement action. A ground (a) appeal was also added with the requisite fee paid for the grant of planning permission to be considered.

4. After the enforcement notice was issued the Council formally adopted the Chelmsford Local Plan 2013 on 27 May 2020. If the ground (d) appeal fails then this new Local Plan ('LP') falls to be considered in the ground (a) appeal. Opportunity was given to both parties to comment on any implications arising in that regard.
5. There are two hardstandings at the appeal site. One is concrete which the appellant says has existed over 40 years. The other is surfaced with road planings. The enforcement notice requires only the latter to be removed. The appellant had applied for a Lawful Development Certificate¹ ('LDC') for use of the concrete hardstanding for storage and distribution within the terms of Class B8 of the Town and Country Planning (Use Classes) Order 1987, as part of a wider application. This part of the application was refused in a split decision issued on 27 November 2019 on the basis that it had not been demonstrated, on the balance of probabilities, that the land had been used for storage for a continuous period in excess of 10 years. There is a right of appeal against that decision but it has not been exercised thus far as the appellant considered an appeal unlikely to be determined before the enforcement appeal by which time it would be too late to override the notice. I am invited on the grounds of exceptional circumstances to issue a LDC in respect of the B8 use applied for.
6. Had an appeal been made promptly against the LDC refusal then it could have been linked to the enforcement appeal for determination at the same time. As it is, there is a ground (d) appeal which raises the same issues and I have been provided with the information that accompanied the LDC application. If the storage use is found to be immune from enforcement action then the notice will be quashed and consideration can be given to the issue of a LDC. If the ground (d) appeal fails, then it is only the unauthorised use of the concrete hardstanding that must cease.
7. The land outlined on the enforcement notice plan comprises a large area of pasture as well as the areas used for storage. The allegation is directed at the material change of use of the whole area to a storage use. I can understand why the notice was drafted in this way as the appellant identified the land as being in storage use only in his reply to a Planning Contravention Notice ('PCN') completed prior to issue of the notice. However, those answers related to the hardstandings and from what I saw much of the land remains in agricultural use. Furthermore, the way that the allegation and requirements are framed, it encompasses all storage whereas the Council's concern clearly arises over *non-agricultural* storage. For accuracy the breach of planning control should be expressed as the material change of use of the land to a *mixed use of agriculture and non-agricultural storage*. The notice can be corrected without injustice arising to either party as simple points of clarification and precision.

Validity of the enforcement notice

8. Part of the argument raised under ground (d) concerns the validity of the enforcement notice. The appellant points out that the reasons for issuing the enforcement notice cite only policy DC1 without identifying the specific Development Plan Document and fails to mention other relevant policies. Given the case that has been argued on ground (a), the appellant was not misled. Incomplete policy references are not fatal to the validity of the notice.

¹ Application ref: 19/01524/CLUED made under section 191 of the 1990 Act

9. The appellant highlights how the notice is directed at a material change of use of the land for storage whereas the requirements not only require the storage use to cease, but also the removal of the hardstanding surfaced with road planings as shown on the plan accompanying the notice. Whilst acknowledging that a notice attacking a material change of use can include the removal of operations facilitating that use, the appellant argues that the hardstanding is an engineering operation in its own right. As such, it is maintained that a 4 year immunity period applies under section 171B(1) of the 1990 Act and not 10 years as applicable before a material change of use becomes immune from enforcement action under section 171B(3).
10. If the appellant is right then the notice should have alleged a separate breach regarding the formation of a hardstanding to which the 4 year period would apply. The notice identifies a 10 year immunity period only.
11. If the only purpose of the hardstanding being laid was to enable it to be used for storage, being the use attacked by the notice, then the hardstanding would simply be part of the material change of use. Case law has established that where a notice alleges a material change of use it may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use. That is so even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement.
12. In the ground (a) appeal the appellant confirms that the hard surface made of road planings was put down to store caravans. This is reinforced by the PCN reply completed on 5 February 2019 when in answer to the question "For what purpose was the hardstand constructed?", the appellant replied "storage". The storage use given in the replies is caravans/mobile homes, cars, boats and vans. Moreover, the appellant confirms that the storage use commenced from the day that the hardstanding was put down.
13. The evidence firmly indicates that the hardstanding was laid solely for those storage purposes and to facilitate that unauthorised use. It leads me to conclude that the hardstanding identified on the notice plan is simply part and parcel of the unauthorised use.
14. In such cases, and contrary to what the appellant argues, it is unnecessary for the works to be referred to in the allegation. It may have been better if the allegation was phrased in terms of, "a material change of use of the land *and the formation of a hardstanding to facilitate that change of use*". In this way it would be clearer that the terms of the deemed planning application under ground (a) includes the facilitating works, but it is not essential.

The appeal on ground (d)

15. The ground of appeal is that at the time the notice was issued it was too late to take enforcement action. The burden of proving relevant facts is on the appellant, and the relevant test of the evidence is the balance of probabilities. The evidence of the appellant does not need to be corroborated provided it is sufficiently precise and unambiguous.
16. Originally the ground (d) appeal concerned solely the hardstanding surfaced with planings. The appellant subsequently requested that the use of the concrete hardstanding be added. The Council was given opportunity to respond. The appeal concerns the use of both hardstandings. As set out in my procedural

note the appellant argues that a 4 year period applies to the hardstanding outlined on the notice plan which is required to be removed. I have established that it is subject to a 10 year immunity period.

17. To succeed on this ground the appellant must demonstrate that the change of use for storage occurred at least 10 years prior to the date of issue of the enforcement notice on 4 June 2019 and continued without material interruption for a period of 10 years after the date of such change.
18. The period need not necessarily be that immediately preceding the issue of the notice so long as there has not been reversion to the original use or another change of use in the intervening period.
19. The appellant states that the concrete hardstanding was in situ when his father acquired the land in the 1980's and has been used for general storage ever since. It is claimed that the storage included cars and small vans in connection with the appellant's banger racing hobby.
20. I am directed by the appellant to the comments of a third party regarding the use of the concrete hardstanding. However, they say only that the 'pad' has never been used for agricultural storage because of the vehicles on it without specifying a particular timescale.
21. Several handwritten letters are produced regarding the wider use of the land for storage. Not all are clear which land is being described. Where the concrete hardstanding is clearly identified, one witness states that materials were stored on it for over 40 years but does not elaborate on the type of materials. Another witness indicates that in 1982 the area was 'generally used for storage including sand, ballast, timber and lorries'. The phraseology suggests that was not always the case and no explicit mention is made of the period after 1982.
22. The most specific evidence is from a witness who says that the landowner allowed him to keep a horsebox on the concrete hardstanding from 1993-2010. This witness states there were 'often building materials stored' as well as vehicles, trailers and vans. The Council concludes that the horsebox was parked on the land rather than stored because the witness says the horsebox was used regularly. In my view it could still constitute storage, but what is unclear from the evidence is whether that use was continuous throughout those years or intermittent. In addition, the use of the word 'often' indicates that there were times when there was no storage of other items.
23. Various aerial photographs are produced. The earliest one is said to be from 2005. Something is placed on the concrete hardstanding but the quality is too poor to see if it is non-agricultural storage. The area appears clear of any item in an image identified as 2006. An aerial photograph produced by the Council and said to be taken on 23 June 2009 shows the wider appeal site under cultivation. The concrete hardstanding is surrounded by cut crop laid out in rows. There is no sign of any storage use apart from some form of deposit along the top edge of the concrete hardstanding. The appellant identifies this as a pile of road planings for use on the other hardstanding which would have been laid shortly after the hay was baled, probably early July 2009. Even if that is so, it would be too late to demonstrate the requisite 10 year period of use for that other hardstanding to be immune from enforcement action.
24. By the time of the aerial image from 2011 there are vehicles parked on the

concrete hardstanding with the level of activity seemingly increasing in the following years.

25. There is evidence from the appellant himself and others of storage use of the concrete hardstanding ongoing over many years. However, it is not sufficiently clear and precise that such use was continuous throughout any 10 year period prior to issue of the enforcement notice. Indeed, the aerial photographs from 2006 and 2009 indicate that there were times when there was little or no storage use taking place and not for vehicles as suggested.
26. I cannot be satisfied on the information before me that on the balance of probabilities there was a continuous storage use of the concrete hardstanding for non-agricultural purposes over a period in excess of 10 years. The appellant has not discharged the burden of proof and the ground (d) appeal must fail.

The appeal on ground (a) and the deemed planning application

27. The deemed application is for the development as enforced against and existed on the date the enforcement notice was issued. It is possible to grant permission for the whole or part of that development. The development enforced against is the material change of use of land for (non-agricultural) storage with the formation of hardstanding facilitating that use.
28. Around the time the notice was issued there were caravans on the appeal site, boats and scrap vehicles. The appellant acknowledges that from about 2015 the storage has extended into the grassed areas between the two hardstandings with the use gradually intensifying over time.
29. However, the appellant expressly seeks planning permission only for the hardstanding edged in green on the enforcement notice plan for storage purposes and not the larger expanse of land that has been used. There is no land edged green, only an area edged blue to denote the hardstanding formed of road planings. I take it to be this land to which the appellant refers. I am fortified in that conclusion by the appellant's references to its use for storing caravans for almost 10 years which corresponds with submissions made in respect of this area under ground (d).
30. It is submitted that the land has only ever been used for the storage of touring caravans and the appellant invites me to consider the grant of permission for that specific use controlled by a suitably worded condition.

Main Issues

31. The appeal site lies within the Metropolitan Green Belt. The main issues are:
- whether the development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework ('the Framework') and development plan policy;
 - the effect on the openness of the Green Belt and the purposes of including land within it;
 - the effect on the character and appearance of the surrounding area;
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

32. The appellant contends that there is discord between the provisions of Policy DM10A)iii of the newly adopted LP and Paragraph 146 of the Framework because it is drafted in more restrictive terms. However, the development enforced against does not concern the use of land within the curtilage of a building for DM10A)iii to apply in this instance.
33. It is strategic policy LP S11A) which provides that the openness and permanence of the Green Belt will be protected and opportunities for its beneficial use will be supported where consistent with the purposes of the Green Belt. This reflects Paragraph 146 of the Framework which identifies certain forms of development which will not be inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include, at sub-paragraph e), material changes in the use of land and engineering operations at sub-paragraph b).

Openness & Green Belt purposes

34. As set out in Paragraph 133 of the Framework, 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 permanence.
35. The concept of 'openness' in Green Belt terms does not imply freedom from any form of development. Depending on the circumstances it can have visual as well as spatial aspects. Thus, the laying of a hard surface can still be capable of affecting openness even in cases where it is not visible from other land. In this instance the hardstanding formed covers a sizeable area and has a considerable visual impact. Whilst the surface may be quite thin and it cannot be seen clearly from most parts of the public domain that does not diminish its harmful effect. Uncovered parts can still be seen from outside the site.
36. Despite part of the site having been cleared of some scrap vehicles, caravans and boats, numerous cars and vans remain on the areas of hard surfacing. A boat is deposited near to the trees defining the northern boundary.
37. The northern boundary of the appeal site is demarcated by trees providing a dense backdrop of foliage behind the pasture. This screens the appeal site from the housing to the north, but it remains open along the southern boundary with clear views of the use.
38. Given the type and volume of the storage use there is an appreciable loss of openness in spatial and visual terms even if it is limited to the hardstanding which is not small. Where there was once open field, there is now a storage use and hardstanding which tangibly encroaches into the countryside doing nothing to assist in its safeguarding in conflict with the Green Belt purpose in Paragraph 134c) of the Framework.
39. Thus, the material change of use and facilitating development amounts to inappropriate development in the Green Belt.

Character and appearance

40. The eastern end of the appeal site adjoins a complex of barns/small buildings and other structures of utilitarian appearance. It is at this end where the hard surfaced area has been laid with road planings. The concrete hardstanding is located deeper within the site. Grassed paddocks lie beyond where a small number of horses were grazing at the time of my visit. To the south of the appeal site there is open countryside.
41. A public footpath bisects the appeal site leading from the direction of Roxwell Road through the paddocks. It proceeds in a southerly direction passing close-by the concrete hardstanding and across the wide expanse of the adjacent cultivated field. From the public footpath there are uninterrupted views across the field of the stored vehicles, vans etc. Their presence is highly prominent and obtrusive drawing the eye from afar. As touring caravans are larger than cars and many vans, I consider that their visual impact would be greater still. That would be so even though the size of the hard surfaced area would limit the capacity for stored caravans. It is large enough for the appearance of a number of bulky caravans to have a dramatic effect on the character and appearance of the area when viewed from the south and west.
42. Against the verdant backdrop and in the context of the wide open fields to the south, the storage use introduces urbanising development totally out of keeping in its surroundings. This is not mitigated in any way by the proximity of the eastern end to hardstanding in the vicinity of the group of buildings or that those buildings will obscure some views of the caravans stored.
43. The appellant flags up that the reasons for issuing the enforcement notice do not identify any harm from the hard surfacing which it seeks to remove. However, as set out above I am satisfied that the formation of the hardstanding is part and parcel of the material change of use alleged and identified by the Council as inappropriate development. Indeed, I consider that the hard surfacing has brought about a harsh and permanent change to the character and appearance of the appeal site which is highly detrimental.
44. There is a severe erosion of the rural surroundings arising from the storage use and the formation of the facilitating hardstanding which have a substantial adverse effect on the character and appearance of the site and surrounding area contrary to LP Policy S11A) which seeks to protect the Green Belt. There is also conflict with Paragraph 124 of the Framework which seeks good design as a key aspect of sustainable development and Paragraph 127 which, amongst other things, promotes development which adds to the overall quality of the area and is sympathetic to the local character and landscape setting.

Other considerations

45. The appellant suggests that conditions could be imposed to restrict the type of storage to touring caravans and for screening along the southern boundary. Attempting to conceal the area of hardstanding and its use from view from the fields to the south would not alter the fact that there is negative impact on openness or that there has been an encroachment into the countryside.
46. It may soften the visual impact of the storage use, but it would take some years to become established. In any event, concealing unsuitable development is not a satisfactory approach and does not represent good design. I am not satisfied

that the harm can be satisfactorily mitigated.

47. I note that Paragraph 83 of the Framework sets out that planning policies and decisions should enable the development and diversification of agricultural and other land based rural businesses and the retention and development of accessible local services and community facilities. Paragraph 84 recognises that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements. Of course, it does not mean that all such development within the Green Belt will be necessary or acceptable.
48. The appellant submits that the caravan storage facility provides a benefit to the local community given the difficulties of parking caravans in front gardens (which may be precluded anyway by a covenant in the title deeds) and the high fees to store touring caravans on industrial land. It is argued that the extension of the caravan storage facility arose from increased demand and its full use over a prolonged period is reflective of the need for the facility. The close proximity to Chelmsford and Writtle is said to provide a huge client base.
49. Clearly, there is a benefit to those customers who use the storage facility although such benefit could be derived without being located within the Green Belt. As a benefit it attracts limited weight only.
50. The appellant further contends that the narrow end of the appeal site where caravans have been stored is adjacent to existing buildings and the size and shape of land made it difficult to harvest. Additionally, the cessation of its agricultural use has not materially affected the amount of hay taken from the field. In effect this is an argument that there is little harm, rather than a benefit of the development and it carries very little weight. There are clearly economic benefits to the appellant from income generated by the caravan storage business, but as personal benefits they carry very limited weight. I recognise that the diversification of the farming activities undertaken on the wider site may help to support the rural economy to some limited extent and I attribute it weight accordingly.

Planning & Green Belt balance

51. The development is inappropriate development in the Green Belt which is harmful by definition and gives rise to substantial harm to openness. In addition, it conflicts with the Green Belt purpose to assist in safeguarding the countryside from encroachment. According to Paragraph 144 of the Framework substantial weight should be given to any harm to the Green Belt. There is also substantial harm to the character and appearance of the area.
52. I have balanced the totality of harm against those factors advanced in favour of the development limited to caravan storage on the area of hardstanding and taken into account the possibility of imposing conditions. Looking at the case as a whole, I consider that the other considerations do not clearly outweigh the harm. Consequently, very special circumstances to justify the development or any part thereof do not exist.

Conclusion on ground (a) and the deemed planning application

53. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The appeal on ground (f)

54. The ground of appeal is that the steps required by the notice to be taken are excessive. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
55. The notice requires the storage use to cease and complete removal of the hardstanding outlined on the plan. This is consistent with an intention to remedy the breach. The reasons for issuing the notice also identify harm to the Green Belt which concerns injury to amenity. It follows that the purpose of the notice must be directed towards both purposes.
56. There is a ground (a) appeal which when considered along with the appeal on ground (f) gives greater scope for argument than a ground (f) appeal alone.
57. Under ground (f) the appellant repeats arguments that the requirements are excessive to require removal of the hardstanding, resultant debris and restoration of the land when construction of the hardstanding has not been identified in the allegation as an engineering operation. As already discussed, when considering the validity of the notice, I am satisfied that the hardstanding was not formed for any purpose other than to facilitate the unauthorised storage use. That being the case, the notice can properly require the removal of facilitating development even if it might as an operation alone have become immune from enforcement action.
58. The appellant further suggests that if the hardstanding had been considered as an engineering operation it would not be inappropriate development within the provisions of Paragraph 146b) of the Framework. That provision is still subject to the preservation of openness and there being no conflict with the Green Belt purposes which I have already established would not be achieved, regardless.
59. I have considered whether development could be granted for part only of the development by limiting the type and extent of use but I am not satisfied that this could be achieved to address the Green Belt harm and to remedy the injury to amenity.
60. The appellant suggests it is excessive to require removal of the hardstanding when it could be used instead for the storage and parking of agricultural vehicles in association with the farming of the adjacent grassland. It is acknowledged that the hardstanding has not been used for such purposes in the past which prompts the Council to query whether there would be an agricultural need. In response the appellant argues that it could be used to store agricultural food, equipment and machinery pointing out that the land was previously used to rear cattle and pigs.
61. Nevertheless, the hardstanding is an alien feature within the Green Belt which I have found to have a highly detrimental urbanising effect. Leaving it in place would neither remedy the breach nor address the injury to amenity. Having already corrected the allegation and requirement there is no question of the notice preventing a legitimate agricultural use.
62. With the corrections already made, the notice does no more than seek to achieve the purposes of section 173(4)(a) and (b) and is not excessive.

63. Consequently, there is no obvious alternative scheme that would overcome the planning difficulties. I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. Nothing in the requirements prevent the appellant from doing what he is lawfully entitled to do in the future after he has complied with the notice.

64. The appeal on ground (f) fails.

The appeal on ground (g)

65. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. The appellant seeks a compliance period of 6 months rather than 3 months.

66. The appellant confirms that since enforcement investigations began, the extent of storage has greatly diminished. It is suggested that it will take a little while to trace some owners of the caravans and one remaining boat is difficult to remove as the trailer has rusted away and the boat sunk into the ground.

67. Whilst I note that inadequate records were kept in the past, there must be some means of identifying and contacting the owners whose property is held. No details are provided on how many owners had proved untraceable and many months have now elapsed with opportunity to make progress.

68. By the time of my site visit the site clearance had begun and it was predominantly cars and vans with caravans placed on the adjacent land. The effect of the appeal is to stop the clock. The appellant will have had many months to arrange removal of the boat positioned on land outside the area for which planning permission was sought.

69. The appellant states that vehicles are temporarily stored that are beyond economical repair before being taken to be scrapped. The appellant accepts this has not been done on a regular basis leading to an accumulation. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm arising from it, as identified in the reasons for issuing the notice. In line with Paragraph 58 of the Framework, effective enforcement is important to maintain public confidence in the planning system.

70. I see no reason why the remaining items could not be removed within the period of 3 months.

71. The appeal on ground (g) fails.

KR Seward

INSPECTOR