The Planning Inspectorate

Appeal Decisions

Site visit made on 29 July 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Appeal A: APP/Z4718/W/20/3247309
201 Latham Lane, Gomersal, Cleckheaton BD19 4AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Lee Tearle & Ms Joanne Miller against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2019/62/91601/E, dated 14 May 2019, was refused by a notice dated 20 December 2019.
- The development proposed is change of use to mixed use of land for horticultural use (agriculture) and landscaping business with siting of portable storage containers and portacabin office.

Appeal B: APP/Z4718/C/20/3250831
Appeal C: APP/Z4718/C/20/3250832
Land adjacent to 201 Latham Lane, Gomersal, Cleckheaton BD19 4AR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Lee Tearle (Appeal B) and Ms Joanne Miller (Appeal C) against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 2 March 2020.
- The breach of planning control as alleged in the notice is: Without planning permission the unauthorised material change of use of land to storage (in connection with a landscaping business) and the associated laying of a hard standing, siting of portable storage containers and portacabin office.
- The requirements of the notice are:
  a) Cease the use of the site for storage
  b) Remove all structures, storage containers, equipment and associated hardstanding's
  c) Return the land to its former condition that existed prior to the unauthorised change of use taking place
- The period for compliance with the requirements is:
  1) To complete step 5(a) above – within 60 days after this notice takes effect
  2) To complete step 5(b) above- within 60 days after this notice takes effect
  3) To complete step 5(c) above-within 120 days after this notice takes effect
  Total time for compliance – 120 days after the date this notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2) (c), (f) and (g) 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.

Decisions

Appeal A - The appeal is dismissed.

Appeals B and C

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

   - Inserting the wording 'a mixed agricultural use and' after the words 'to' in paragraph 3 and in the second and fourth paragraphs found within the Reasons for Issuing the Notice (paragraph 4).
   - Deleting the word 'hardstanding's' in paragraph 5b) and replacing it with 'hard standing'.
   - Deleting the word 'land' from paragraph 5c) and replacing it with 'ground surface'.
   - Deleting all the text and steps within paragraph 6 and replacing it with 'The time for compliance is six months after the date this notice takes effect'.

2. Subject to these corrections and variation the appeals are dismissed, and the enforcement notice is upheld.

Appeal A

Main Issues

3. The main issues in this case are:

   - Whether the material change of use would be inappropriate development in the Green Belt;
   - The effect on the character and appearance of the area; and
   - If it is inappropriate development, 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 required to justify the proposal.

Reasons

Inappropriate development

4. The appeal site is located within the Green Belt and planning permission is sought for a mixed use of land for horticultural use (agriculture) and landscaping business with siting of portable storage containers and portacabin office. At the time of my visit there was no evidence of any horticulture taking place on the site but storage containers, a portacabin office and a hard surface area were being utilised to operate the appellant's landscaping business.

5. Paragraph 146 of the National Planning Policy Framework (the Framework) states that certain forms of development, including material changes of use of the land, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.

6. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and essential characteristics of Green Belts are their openness and their permanence. Policy LP10, Supporting the rural economy, of the Kirklees Local Plan Strategy and Policies 2019 (LP) advises that in all cases where

development is proposed in the Green Belt regard must be had to the relevant policies in the plan and relevant national planning policy.

7. The appeal site relates to an area of land which fronts onto Latham Lane and surrounds the appellants' residential bungalow at 201 Latham Lane. The appeal site is predominantly laid as pasture, however the part of the site which fronts onto Latham Lane has been hard surfaced to provide a parking area for plant and vehicles associated with the appellants' landscaping business and to facilitate the siting of storage containers and a portacabin office used in connection with the business. In addition, at the time of my site visit there was a skip on the site, a mini-digger and a small amount of landscaping material was being stored in bags. The appellants advise that they are a small family run landscaping business that employ four members of staff. The proposal is to use the land to plant trees and shrubs for use in their landscaping business which they operate from the site. The associated hard surface area, with the storage containers are required to support the business, keep tools and equipment used in the landscaping business, including a mini digger and for the loading and unloading of employee's vans and delivery vehicles.

8. The metal storage containers and the portacabin office have a solid form, and albeit they may be moveable structures, when they are stored on the site their physical presence and bulk form reduces openness. In addition, the use attracts employee's vehicles to the site to load a works van on the hard surface area with the materials and equipment required for use in their daily landscaping work. Works vans are stored on the site overnight and employees' vehicles remain on the site during the day. From my own observations on my site visit the site is also used for outside storage of landscaping materials and waste (siting of a skip). The parking of vehicles and storage of materials and waste further reduces the site's openness.

9. The appellants advise that the storage containers replaced existing storage buildings which were on the site. However, I have not been provided with any substantive evidence that would suggest that those buildings were of the same scale as the storage containers and portacabin office the subject of this appeal. Furthermore, any previous buildings on the site were not permitted for storage use in association with a landscaping business. I therefore give this consideration little weight.

10. Taking into account all of the above, I consider the harm to the openness of the Green Belt to be moderate. In addition, the use of the site for a mixed horticulture and landscaping business with the storage containers and portacabin office and parking and loading area required for the day to day operation of that business, results in an encroachment of development into the open countryside.

11. I conclude that the material change of use to a mixed use of land for horticultural use (agriculture) and landscaping business with siting of portable storage containers and portacabin office does not preserve openness and conflicts with one of the purposes of the Green Belt which is to assist in safeguarding the countryside from encroachment. There is conflict with paragraph 146 of the Framework and the development is inappropriate development in the Green Belt.

12. In conformity with Paragraph 83 of the Framework, Policy LP10 of the LP provides support for the rural economy, including support for farm diversification schemes and opportunities to increase local employment. However, Policy LP10 makes it clear that such development must take account of national green belt policy. I have not been provided with any substantive evidence that would lead me to believe that the landscaping business has been developed as part of a farm diversification scheme which would support the management and viability of a farm holding or that it is a new business start-up. The landscaping business is well established in its own right, and the proposal is to support the business through the horticultural use of the land. For the reasons set out above the proposed mixed horticultural use and landscaping business is inappropriate development in the Green Belt which conflicts with the Framework. Consequently, there is also conflict with Policy LP10 of the LP.

Character and appearance

13. This part of Latham Lane is characterised by sporadic clusters of residential development, farmsteads and associated buildings. The open fields and pastureland which surround existing built development and abut Latham Lane provide for a generally open character which reinforces the rural qualities of this area.

14. Whilst the storage containers have a relatively simple form and their appearance is not unlike a building that might be used in association with an agriculture use of the land, the portacabin office with its prefabricated and commercial appearance is not in keeping with, and seriously detracts from the visual qualities of this part of the countryside. In addition, the storage containers and portacabin are prominently sited close to and clearly visible from Latham Lane. In this location they detract from the visual qualities of the street scene. The extensive hard surfaced area which is utilised for the parking, loading and unloading of vehicles and the storage of materials/plant used in connection with the landscaping business has an urbanising impact on the area, the harm to which is amplified when vehicles, material and plant are stored on it.

15. I conclude that the development has a harmful effect on the character and appearance of the area. There is conflict with the development plan and in particular with Policy LP24 of the LP which seeks to ensure that new development, amongst other things, respects and enhances the character of the townscape, heritage assets and landscape.

Green Belt balance

16. I have found that the proposal would constitute inappropriate development in the Green Belt and would by definition be harmful to the Green Belt; harm which the Framework indicates should be given substantial weight. Added to which is the harm to the character and appearance of the area which has been identified. On the other side of the balance the development provides employment for four members of staff and therefore has a small benefit to the local economy. However, I am not convinced that the storage and office could be not be re-located to a more appropriate location, and there would therefore be no loss of employment or adverse effect to the local economy. I have also taken into consideration the sustainable benefits identified by the

appellants from being able to grow their own trees and plants to support the landscaping business.

17. On the analysis above the harm by reason of inappropriateness, and the additional identified harm, are clearly not outweighed by other considerations. Very special circumstances do not exist to justify the development. The development fails to comply with national planning policy in the Framework to protect the Green Belt.

Conclusion

18. For the reasons given above and taking into account all other matters raised, the change of use is not compliant with the development plan and no considerations merit a decision other than in accordance the development plan and the Framework. I conclude that the appeal does not succeed.

Appeals B and C on ground (c)

19. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control.

20. The appellants' case is that the moveable temporary storage containers and portacabin office replaced existing agricultural buildings which were on the Land. The Land is to have a horticultural use and the appellant intends to use the Land to plant trees and shrubs to be used in the landscaping business, which they consider to be ancillary to the horticultural use. The portacabin is used as an office for the management of horticulture and landscaping work and the containers used for the storage of equipment and materials to be used in that mixed use. The appellants accept that these buildings are unauthorised. However, they contend that the laying of the hard surface is permitted development pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 6, Class B. Although some of the appellants' case might be more relevant to an appeal on ground (b), that those matters stated in the notice which may give rise to the breach of planning control have not occurred as a matter of fact, I have considered all the evidence and made a determination on ground (c) as appealed.

21. The main issue is whether as a matter of fact and degree there was a material change in the use of the Land such as would amount to development requiring planning permission.[1] A main consideration is whether a significant difference in the character of the activities and use can be identified when compared to what has gone on previously. The onus is on the appellants to prove their case on this legal ground of appeal.

22. There is no dispute between the parties that the lawful use of the Land is for agriculture, which would include horticulture.[2] The appellants do not dispute that the storage containers and portacabin which have been sited on the Land are currently used in association with their landscaping business. In addition, the hard surface area which has been created is acknowledged as being used

[1] In the terms of s55(1) of the 1990 Act.
[2] In the terms of s336 of the 1990 Act.

for the parking and storage of vehicles and plant associated with that business.

23. From the evidence I have before me the Land where the hard surface has been laid and where the storage units and portacabin office are sited is being used for the storage and parking of equipment and materials used in connection with the appellants' landscaping business. That business relates to the carrying out of commercial and domestic landscaping services and the Land is used for storage and as a base in connection with that business. The remainder of the Land identified in the notice is currently laid as pasture. Although the appellant has stated that it is their intention to use this part of the Land for horticulture and to grow plants and trees for use in their business, I have not been provided with any substantive evidence that a horticultural use is currently taking place on the Land or lead me to believe that the landscaping business is ancillary to an existing horticultural use which has been suggested by the appellants.

24. However, the notice alleges a breach of planning control as a material change of use of all of the Land to storage (in connection with a landscaping business) and the associated laying of a hard surface, siting of a portable storage containers and portacabin office. From the evidence I have before me, only the area where the hard surface has been laid is being used for storage in connection with the landscaping business. The remainder of the Land retains an agricultural use as pasture. Consequently, it seems to me that the Land has a mixed use. I am satisfied that there would be no injustice to either the Council or the appellants if I correct the alleged breach of planning control to include an agricultural use. The parties agree that the lawful use of the Land is agriculture, and this correction would not change the purpose or intent of the notice. In addition, the requirements would remain the same.

25. The evidence of the activities associated with the new use leads me to conclude that there is a significant difference in the character of the use of the Land from its previous agricultural use. A material change of use occurred and there is no record of a specific permission being granted for that change of use at Land adjacent to 201 Latham Lane.

26. In the alternative, the Town and Country Planning (General Permitted Development Order) (England) 2015 (the GPDO) in Article 3 grants planning permission for the classes of development described as permitted development. None of the classes provide for a change of use to a mixed storage and agricultural use of Land. Furthermore, the new use is a sui generis use[3] for which no permitted development rights are available, including those for laying a hard surface.

27. My conclusion is that the change in the character of the use has materially changed it from a use for agriculture to a mixed use for agriculture and storage (in connection with a landscaping business) and the associated laying of a hard surface, siting of portable storage containers and portacabin office. Development took place for which no planning permission was granted by the local planning authority. This material change of use is not permitted

[3] Meaning 'of its kind' when no use classes order fits.

development under any provision of the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

Appeals B and C on ground (f)

28. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.

29. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control.

30. The appellants consider that the requirements of the notice are vague as storage on the Land is permissible for horticultural use. Furthermore, the visual impact of the hard surface area could be remedied by the use of grids to allow grass to grow through. Returning the land to its former condition would involve putting back the two buildings that were previously on site.

31. Taking into account the alleged breach of planning control as corrected, it is sufficient for the notice to bring about the cessation of the unlawful component of the mixed use. It is clear from the reasons for issuing the notice and its requirements, that the unlawful use is storage, facilitated by the associated laying of the hard surface, siting of portable storage containers and portacabin office. I do not therefore consider that the requirements to cease that use and remove those works which facilitate that unauthorised use are vague or excessive. The requirements do not prevent the use of the Land for its lawful agricultural use.

32. Furthermore, the requirement to return the Land to its condition that existed prior to the unauthorised change of use taking place does not require any buildings that were previously on the land to be rebuilt. I have not been provided with any evidence that would suggest that the removal of those buildings was unlawful, and the notice does not specify that they should be replaced. Indeed, it is likely that planning permission would be required for any new buildings to erected on the site. However, to avoid any ambiguity, I shall correct the notice to refer to 'ground surface' rather than land. This would not alter the purpose of the notice and there would be no injustice to either party.

33. I have found that the use of the Land for storage (in connection with a landscaping business) and the associated laying of a hard surface is unacceptable. In the absence of an appeal on ground (a), general planning considerations cannot be considered when determining an appeal on ground (f), and the notice cannot then be varied to attack its substance. In addition, it can be seen from my decision that I have found the proposed use of the Land for a mixed horticulture and landscaping business also to be unacceptable (Appeal A). There are therefore no lesser steps available which would achieve the statutory purpose behind the notice.

34. For the reasons given above the Appeals B and C on ground (f) fail.

Appeals B and C on ground (g)

35. The issue is whether the compliance period is reasonable. The appellants consider that a period of 160 days would be a more appropriate timescale for them to search for new premises, agree terms and relocate their business.

36. The notice requires the use to cease and structures and hard standings to be removed from the Land within 60 days. Whilst I agree that this is sufficient time to facilitate the removal of this development, I agree that a period of 60 days is unlikely to be sufficient to find new premises and relocate the business to them. The conclusion that I have reached that a period of sixth months would be a more reasonable time period for compliance with all of the steps in the notice, given the nature of the development and circumstances in this case. To this extent the appeals on ground (g) succeed.

Overall Conclusions

37. For the reasons given above I conclude that the appeals shall not succeed. I shall uphold the enforcement notice with corrections and variation.

Elizabeth Pleasant

INSPECTOR