
Appeal Decision

Site visit made on 29 July 2020

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2020

Appeal Ref: APP/N5090/C/19/3235683

Land at Cottage Garden Nursery, 127 Barnet Road, Barnet EN5 3JX

- 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 Sunil Pindaria against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 16 July 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission the use of the land for storage of motor vehicles, the construction of a single storey building (as shown and highlighted in the attached image) and the laying of hardstanding.*
- The requirements of the notice are:
 1. Cease the use of the land for the storage of motor vehicles.
 2. Demolish the single storey building to the front of the site.
 3. Remove the hardstanding and restore the levels of the land to match those of the adjacent site at 129 Barnet Road and remove any other buildings, cabins, marquees and any other temporary structures from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act ('the 1990 Act').

Summary decision: The appeal is dismissed and the enforcement notice is upheld with a variation, as set out in the Formal Decision below.

Background

1. Planning permission was granted in 1985¹ for "Use of land as garden nursery, formation of parking area at front and erection of green house and storage shed". It is common ground between the parties that the permission was implemented and that the lawful use of the site is as a retail garden nursery.

The Appeal on Ground (a) and the Deemed Planning Application

2. The appellant seeks planning permission, as he is entitled to do, only for 'part of the matters' alleged by the notice. I shall paraphrase his proposal, because the deemed planning application (DPA) is made for the development described by the notice and therefore reference must be made to that description.
3. Thus, the appellant seeks a grant of planning permission for the alleged 'construction of a single storey building....and laying of hardstanding' but not

¹ Planning application reference N07781 granted 25 October 1985

the alleged 'use of the land for the storage of motor vehicles'. He proposes that the site is returned to its lawful use as a retail nursery (Class A1) and the alleged building and hardstanding are utilised for storing nursery products and for incidental staff and visitor parking respectively

Main Issues

4. As the site lies within the Metropolitan Green Belt, the main issues are:

- Whether the alleged development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework ('the Framework') and the development plan.
- The effect of the alleged development on the character and appearance of the area.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations which amount to very special circumstances required to justify a grant of planning permission for the alleged development.

Reasons

Inappropriate Development in the Green Belt

5. The Framework advises at paragraph 133 that the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence.
6. Accordingly, paragraph 143 states that 'inappropriate development' in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy DM15 of the Barnet Local Plan Development Management Policies 2012 (the 'DMP'), Policies CS1 and CS7 of the Barnet Local Plan Core Strategy (the 'Core Strategy') and Policy 7.16 of the London Plan, collectively seek to protect London's Green Belt in accordance with national planning policy.
7. Paragraph 145 of the Framework provides that the construction of new buildings should be regarded as inappropriate development in the Green Belt. But there are exceptions including d) - replacement buildings provided the new building is in the same use and not materially larger than the one it replaces - and g) - the partial or complete redevelopment of previously developed land (PDL) whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.
8. There is no dispute that there were buildings and hardstanding on the land when it was in use as a garden nursery and thus the appeal site should be described as PDL. I therefore accept that the question of whether the alleged building is inappropriate development should be considered with regards to paragraphs 145 d) and g) of the Framework.
9. Furthermore, paragraph 146 b) of the Framework provides that 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.

10. The site is deep and rectangular and slopes down from Barnet Road. It is set back from the road behind a layby as well as a boundary treatment comprising a tall close-boarded timber fence, laurel hedge and double dark green, smooth metal panel gates. On my visit I saw the alleged single storey building was located at the front of the site behind the roadside fence. Since the Council's submitted photograph was taken, metal security railings and gates have been erected on and around parts of the site.

a) The Alleged Building

11. There is no dispute that the buildings previously on the site were as described in the 2015 planning application² and appeal³ and as shown in the appellant's aerial photograph in section 4.7 of his statement. However, those buildings have been demolished before the unauthorised building was constructed, as shown in the Council's statement and by other photographs from the appellant's statement.
12. It cannot be said that the alleged building is a 'replacement building...not materially larger than the one it replaces' because, regardless of comparisons of building dimensions and footprints, the previous buildings no longer exist. To put it another way, if planning permission is refused for the appeal building, there is no fallback position whereby the previous buildings will be on site.
13. Furthermore, it is not the case that the appeal building 'is in the same use' as those previously on the site. The demolition of the garden nursery buildings and erection of the appeal building was undertaken to facilitate the unauthorised change of use of the land for the storage of motor vehicles. I therefore find the appeal building does not fall within the exception in paragraph 145 d) of the Framework.
14. For the building to fall within the PDL exception described in Framework paragraph 145 g) it must not have a greater impact on openness than the 'existing development'. As already said above, the nursery buildings were demolished to facilitate the unauthorised development and are no longer there. The 'existing development' in this instance is a cleared site with no buildings upon it.
15. I accept the appellant's calculations that the previous buildings were larger in footprint and volume. However, the openness comparison must be properly made between the appeal building and the cleared site that it was built upon. On that basis, the appeal building plainly reduces the physical spatial openness of the Green Belt. It also causes a loss of visual openness because although it is largely screened from Barnet Road, it can be seen from the adjacent garage to the south west and fields to the south and east.
16. I note that a young hedge, that has been planted along the southern side of the building, will mature in time. The appellant has also suggested a condition could be imposed on any permission granted to ensure that the site is landscaped in accordance with scheme to be submitted to and approved by the

² Planning application reference 15/06152/FUL refused 10 December 2015

³ APP/N5090/W/16/31432987 dated 22 June 2016

Council. It is possible that the building could be screened by additional planting to the extent that it is not seen to reduce the openness of the Green Belt. However, it would still be physically present and reduce openness of the Green Belt in a spatial sense.

17. Thus the appeal building does not fall within the exceptions set out in paragraphs 145d) or 145g) of the Framework.

b) The Alleged Hardstanding

18. The evidence suggests that the site, when in use as a garden nursery, included areas of concrete hardstanding around the previous buildings and greenhouses. The site has now been resurfaced in tarmac and concrete so that there is more hardstanding than before and, presumably, more cars could be parked on the land than at the garden nursery in the past. I also saw that the ground level of the site has been raised, as suggested by the requirements of the notice.
19. By reason of size, height and intended use for parking, and although the site as a whole is deemed to be PDL. I find that the alleged hardstanding causes a loss of openness in the Green Belt. It also fails to safeguard the countryside from encroachment, in conflict with one of the purposes of including land within the Green Belt. Hence the hardstanding does not fall within the exception in paragraph 146b) of the Framework
20. The appellant has suggested a landscaping condition specifically to overcome any objection that 'the amount of hardstanding is excessive'. He has not, however, described the extent to which the hardstanding could be reduced. If permission is granted for the laying of hardstanding, it would be unreasonable to impose a condition that is expressly worded to somehow require loss of hardstanding.

Conclusion on inappropriate development

21. On the day of my visit, a portacabin and two tall dark green marquee-type structures were on the site for various vehicle-related activities. Most of the site was occupied with parked and stored cars and vans. Subject to the appeal on ground (f), these structures and vehicles will have to be removed whether or not planning permission is granted for the alleged building and hardstanding as requested. Their removal would not mitigate the loss of openness caused by the development subject to the DPA.
22. For the reasons above, I conclude that the alleged building and hardstanding constitute inappropriate development in the Green Belt.

Character and appearance

23. As noted above, the site is PDL and next to land in use as car wash/vehicle repair purposes at 129 Barnet Road where there are associated buildings, structures and signs. The site also stands opposite housing development, but that is screened, and like the garage, set back from the road. To the east and south a paddock and fields wrap around the site behind a roadside hedge. The area has a generally verdant and spacious character and appearance from the trees and other vegetation along Barnet Road and the surrounding countryside.

24. The alleged building is a single storey, plain, functional, flat roof structure. It is largely screened from view from the road, despite being stood on raised ground, by the tall timber boundary fencing and laurel hedge to the front of the site. It can be seen from the garage and adjacent fields, but it is seen from those vantage points as small and congruous with built development to the north and west of the site.
25. Similarly the hardstanding on the site is largely screened from view from the road and it is visually of a piece with the hardstanding at the adjacent garage. With additional planting on the site boundaries, which could be ensured by imposing a landscaping condition, I find that the building and hardstanding and cars parked on the latter would not unacceptably harm the character and appearance of the street scene. Adding weight to this conclusion, plants laid out for sale on the site, if it is returned to a garden nursery use, could be expected to further soften the visual impact of the appeal structure.
26. On this basis, I conclude the alleged building and hardstanding would not cause unacceptable harm to the character and appearance of the area. They would not conflict with Policies CS1 and CS5 of the Core Strategy and Policy DM01 of the DMP which collectively seek to protect and enhance Barnet's character and amenity and ensure that local character is respected through good design.

Other Considerations and Green Belt balance

27. The Framework states that 'inappropriate development' is harmful to the Green Belt by definition and should not be approved except in very special circumstances, which will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm is clearly outweighed by other considerations. Substantial weight should be given to any harm to the Green Belt.
28. I attach significant weight to the fact the appellant wishes to revive the use the site as a garden nursery. Returning the site to lawful active use would be environmentally, socially and economically beneficial, and I understand that nurseries normally including buildings and parking areas.
29. However, the appellant has not evidenced his claim that it is essential to grant permission for the *alleged* building as built, in order for a garden nursery to be viable, perhaps because he has focused on the question of whether the development is inappropriate. He has not shown that the building is particularly suitable for the intended use in any respect.
30. I have found the alleged hardstanding excessive, as the appellant predicated, and that a landscaping condition could not be reasonably imposed if it is worded to require some reduction in the amount of hardstanding. I would also observe that the appellant has not clearly shown when or how the garden nursery use will be resumed. In this situation, I find that the benefits of reviving the use cannot outweigh or justify the harm caused, by reason of inappropriateness, by the alleged building and hardstanding to the Green Belt.
31. I have found that the building and hardstanding would not cause unacceptable harm to the character and appearance of the area. But an absence of harm is not a positive consideration in favour of development or capable of outweighing harm to the Green Belt. Conditions may only be imposed where necessary to make development acceptable, and so I cannot attach much weight to the

benefits that might accrue from landscaping because that could only be required to the extent of neutralising the visual impacts of the building and hardstanding.

32. For these reasons and with regard to all other matters, I conclude that the other considerations raised in this case do not clearly outweigh the harm I have identified. Consequently, very special circumstances necessary to justify the development do not exist. Accordingly, the alleged building and hardstanding conflict with DMP Policy DM15, Policies CS1 and CS7 of the Core Strategy and Policy 7.16 of the London Plan, and the Framework. The appeal on ground (a) must fail.

The Appeal on Ground (f)

33. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or injury to amenity as the case may be. The appellant pleads ground (f) solely with regards to the third requirement or step set out in the notice.

34. The notice alleges that there has been an unauthorised change of use and it requires the use to cease. The notice also alleges the construction of a building and laying of hardstanding and it requires that these are removed. It follows that the notice does not 'under enforce' in any way and its purposes is to remedy the breach. For that reason, and since I have found that the development is harmful to amenity insofar as the appellant pursued ground (a), he must show that the requirements of the notice are excessive in order for his ground (f) appeal to succeed.

35. The appellant suggests it is excessive for the notice to require the removal of the hardstanding and restoration of land levels on the basis that the works would amount to operational development. However, a notice may require the carrying out of any building or other operations⁴.

36. I am more sympathetic to the appellant's concern that the requirement to restore land levels to match those of the adjacent site at 129 Barnet Road is imprecise, because the land there is not even. However, it is not excessive for the notice to require that the land is restored to its conditions before the breach of planning control took place, so that the breach is remedied. The appellant is in the best position to know the state of the property before the alleged change of use and associated works took place. I shall vary step 3 of the notice accordingly.

37. The appellant is also concerned that the requirement to remove temporary structures would prevent him from using other temporary structures when he resumes the garden nursery use. The *existing* temporary structures were placed on the land to facilitate the alleged material change of use. It is not excessive for the notice to require their removal in order that the land is restored to its condition before the change of use took place. Complying with the notice will not prevent the appellant from placing other structures on the land, temporary or otherwise, so far as they are lawful or subject to any grant of permission required.

⁴ S173(5)(b) of the Town and Country Planning Act 1990

38. I conclude that the appeal on ground (f) should succeed in part. I will exercise my powers under s176(1)(b) of the 1990 Act to vary the notice so that step 3 requires the restoration of the land to its level before the breach took place, rather than the level of the adjacent site at 129 Barnet Road.

Overall Conclusion

39. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Formal Decision

40. It is directed that the enforcement notice be varied by *deleting* the words 'to match those of the adjacent site at 129 Barnet Road' in sub-paragraph 5.3 of the notice, and *substituting* with the words 'to their levels before the change of use took place and laying of hardstanding took place'.

41. Subject to this variation 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.

K. Stephens
INSPECTOR