



Appeal Decision

Site visit made on 14 July 2020

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 October 2020

Appeal Ref: APP/P0240/C/19/3242443

Land off Billington Road, Stanbridge, Leighton Buzzard LU7 9JH

- 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 by William Doherty against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice, ref. ENC/17/0304, was issued on 29 October 2019.
 - The breach of planning control alleged in the notice is:

Without planning permission, the erection of a portal framed steel building and the material change of use of land from agriculture to a mixed use of agriculture and a Class B8: Storage and Distribution use; and the enlargement of the vehicular access onto a classified road.
 - The requirements of the notice are to:
 1. Cease the use of the Land for the storage of aggregates, building materials, inert waste and any other storage of materials and any associated plant and equipment.
 2. Remove all the aggregates, building materials, inert waste and any other storage of materials and any associated plant and equipment from the Land
 3. Demolish the metal portal framed steel building (Annotated 'Y' and cross-hatched in grey on Plan **LPA1** attached to the Notice) and remove all associated materials from the Land.
 4. Remove all the gravel floor covering within the metal portal framed steel building (Annotated 'Y' and cross-hatched in grey on Plan **LPA1** attached to the Notice) from the land and reinstate the ground to its former level and condition making use of soils already present on the Land.
 5. Remove all the materials used for the hardstanding area and drive (Annotated hatched area on Plan **LPA1** attached to the Notice) from the Land and reinstate the land to its former level with topsoil and grass seeded.
 6. Remove the double width metal entrance gates and posts and close boarded fencing associated with the enlarged access in the position annotated 'X' on Plan **LPA1** attached to the Notice; re-instate the 3-metre wide single width field gate entrance where the drop kerb exists and install three bar timber fencing and posts on either side of the single width entrance to match the height and appearance of the adjacent existing timber fencing present along the Stanbridge Road frontage of the Land.
 - The periods for compliance with the requirements are:
 - Requirements 1 and 2 – One month
 - Requirement 3 – Three months
 - Requirements 4, 5 and 6 – Four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 fall to be considered.
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Decision

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

OMISSION of the word '*and*' between the word '*storage*' and the word '*distribution*' in paragraph 3 of the enforcement notice; and,

SUBSTITUTION with the word '*or*'.

OMISSION of the name '*Stanbridge Road*' from Requirement 6 of the enforcement notice; and'

SUBSTITUTION of the name '*Billington Road*'.

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 as amended.

The enforcement notice

2. Use Class B8, as defined in The Town and Country Planning (Use Classes) Order 1987 as amended is 'Use for storage **or** as a distribution centre' (my emphasis in bold type). The enforcement notice alleges a mixed use including 'Class B8: Storage **&** Distribution use' (again, my emphasis). I consider the notice to be incorrect in this respect, and I intend to remedy this defect.
3. I note that Requirement 6 of the notice refers to fencing along the Stanbridge Road frontage of the land. There is no frontage onto Stanbridge Road, and I take this to be mistaken for Billington Road. I consider the notice should also be corrected in this respect. I do not consider any party to be significantly prejudiced by these corrections.

Background matters

4. The appeal site is a predominantly open field to the western side of Billington Road with an area of about 4.5 hectares. It lies within the Green Belt. There is a substantial portal framed shed and area of hardstanding near the south-western corner of the field served by a track from the access on Billington Road. The appellant also owns a triangular piece of land on the opposite side of the road, bringing the total area of the holding to about 5 hectares.
5. In June 2017 the Council determined that prior approval was not required for erection of an agricultural building on the site in terms of siting, design and external appearance, and for the siting and means of construction of a private way. The proposed building and access track would therefore be permitted under the provisions of Classes A(a) and A(b) of Part 6 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). This provision allows, amongst other things, for the carrying out of works for the erection of a building, or any excavation or engineering operations on agricultural land comprised in an agricultural unit of 5 hectares or more, which are reasonably necessary for the purposes of agriculture within that unit.
6. In the event the building erected differed from that proposed in the prior approval application in that the long axis of the rectangle is orientated approximately north-south rather than east-west, and the area of hardstanding around the building is somewhat more extensive. Furthermore, the proposal was to retain the existing access with visibility splays, but the access has been

doubled in width, a set of entrance gates erected set back from the road, and an approximately 2 metre high close-boarded timber fence erected to either side, splayed out towards the road.

The appeal on ground (b)

7. This ground is that there has been no breach of planning control as a matter of fact. It is known as a 'legal' ground in which the burden of proof is upon the appellant to show this is the case on the balance of probabilities.
8. The ground (b) appeal is made solely with respect to the alleged material change of use from agriculture to a mixed use of agriculture and a Class B8 Storage or Distribution use. The appellant says that the alleged storage use has not occurred.
9. The Council have put in photographs of the appeal site showing open storage on the land, including aggregates and crushed waste. It is apparent that in July 2017 a compacted access road had been laid, and that there were extensive mounds of loose surfacing materials in the south-western corner of the site, where the building now stands. By August 2018 the building had largely been erected and mounds of similar size were still there. By October 2018 the building was substantially complete, but considerable piles of aggregate and road planings were still apparent.
10. On my visit I saw there were piles of rubble or possibly aggregate on the hardstanding area to the north of the building, and an earth bund along its eastern side.
11. The appellant stated the building would be used for storage of farm machinery and hay and straw storage, and says that remains his intended use. Furthermore, he claims that no commercial activities have taken place on the site. Notwithstanding this claim, it is clear that large quantities of aggregates and/or crushed waste materials have been stored on the land, and that there are still some there. There is no evidence of any hay and/or straw storage, nor of any agricultural machinery being kept there.
12. The Council made an appraisal of the site in September 2019 and found there was a limited number of piles of grey gravel, a modest pile of yellow coloured decorative aggregate and piles of brick rubble. It was also seen that the building had a loose gravel floor and it was completely empty. They say that the building is used to store a large mechanical shovel the most likely use of which would be to move and load aggregates or similar materials.
13. The appellant says that the materials were stored temporarily in small piles and used solely for construction of the agricultural building and associated hardstanding. However, extensive piles of materials remained after construction works were effectively complete. The Council have also received complaints about lorry movements to and from the site carrying aggregate type materials. I also note that the appellant's son operates a business with a fleet of tipper trucks and other plant, and is involved in handling of aggregates and inert waste for the construction industry. This suggests that the site may be used in connection with that business.
14. It appears to me that as a matter of fact and degree that the quantity of material and the length of time for which it remained on site indicates that a storage use has taken place. Furthermore, there is no significant evidence to

show there has been any agricultural use made of the building, hardstanding or access road since the building was substantially complete in October 2019. The remainder of the field is clearly for an agricultural use, and as a matter of fact and degree it appears to me that the mixed use described in the enforcement notice has occurred. I do not consider the appellant's evidence is sufficiently precise to establish that on the balance of probabilities the mixed use has not occurred. The appeal on ground (b) therefore fails.

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

15. This ground is that planning permission should be granted for the matters stated in the notice. The appellant argues that he requires the building, the associated hardstanding and the access in connection with the agricultural use of the appeal site land in addition to other landholdings totalling some 53 acres – that is, about 21 hectares.
16. From all that I have seen and read I consider the main issues to be:
 - Whether the development is appropriate within the Green Belt, and its effect upon Green Belt interests in the light of prevailing national and local planning policy.
 - The effect of the development on the character and appearance of the area.
 - The effect of the development on highway safety for users of Billington Road and of the appeal site access.
 - Whether any harm to the Green Belt 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.
17. The appellant claims that the building is intended for agricultural purposes and falls within the list of buildings that can be regarded as exceptions to the general proposition that new buildings in the Green Belt are inappropriate – as set out in paragraph 145 of the National Planning Policy Framework (NPPF).
18. As noted above there has been little evidence that any agricultural use has been made of the development so far – such as hay, straw or agricultural machinery stored in the building or on the site. Furthermore, no evidence has been put in about the location of other landholdings or the type and scale of agricultural activities carried on there. As the Council say, the appeal site is not in arable use so there would be no straw production, and the amount of hay likely to be produced is small, providing a very limited income.
19. I consider that the agricultural use has not been adequately demonstrated and have found above that the building and hardstanding has been in storage use. It follows that the new building cannot be regarded as appropriate within the Green Belt and is by definition harmful to Green Belt interests – as advised by NPPF paragraph 143.
20. The new building is a bulky and highly prominent feature standing in an open field in this relatively flat landscape. In my opinion the dark green colouring does little to blend the building into the surroundings, and the hedge along the road boundary does not provide an effective screen. Furthermore, the extensive area of hardstanding and widened access with fencing are somewhat urbanising features. I consider this is harmful to the openness of the Green Belt, both visually and spatially. The development fails to preserve this

essential characteristic of the Green Belt as advised by NPPF paragraph 133, and also fails to safeguard the countryside from encroachment – one of the five purposes served by the Green Belt set out in NPPF paragraph 134. Furthermore, the development does not accord with provisions of the development plan, notably Policy GB1 of the South Bedfordshire Local Plan Review of 2004 (SBLPR) which reflects the NPPF restrictions on inappropriate development within the Green Belt. I also give some limited weight to Policy SP4 of the pre-submission Central Bedfordshire Council Local Plan, which again states a general presumption against inappropriate development within the Green Belt.

21. I appreciate that the Officer's report on the Prior Approval notification considered the building would not be dominant or intrusive, but this was in the context of it being for agricultural purposes, for a building in a different orientation, and with a more compact area of hardstanding. Overall, I consider the development as existing to be intrusive in the countryside setting, and harmful to the rural character of the area.
22. Regarding highway conditions, Billington Road is subject to the national speed limit of 60 mph. I saw that traffic past the appeal site is quite heavy, and vehicles appeared to be driven fast on this straight stretch. Although the metal gates are set back from the road, visibility from the widened access is restricted in both directions by the hedges to either side. This is to a degree that does not give adequate visibility of approaching traffic for drivers of vehicles leaving the appeal site. I understand the appellant has prepared sketch details of a possible alternative access position, but that is not a matter before me.
23. I appreciate that the original relatively narrow field access – with visibility splays – was considered to be acceptable. However that was in the context of it being an existing access, and that it would serve the relatively limited agricultural use of the appeal site. Overall, I conclude on the third main issue that the altered access arrangements cause significant harm in terms of highway safety for users of Billington Road and of the appeal site access. In this respect the development does not accord with Policy NE10 of the SBLPR, which seeks to ensure that diversification of farm units has no adverse impact upon highway safety.
24. Turning to the fourth main issue, the appellant argues that even if the existing building were removed it would be permissible to erect the building originally proposed under GPDO rights and for which Prior Approval was not necessary. However, I have found that the appeal site is in a mixed use, rather than being solely agricultural, and it does not appear the development is reasonably necessary for the purposes of agriculture within the unit. This being so, the claimed fall-back position is not realistic, and cannot be a factor to outweigh the harms to the Green Belt, to the countryside and to highway interests. I do not consider there to be the very special circumstances necessary to justify the development. The appeal on ground (a) therefore fails, and I intend to refuse permission on the deemed planning application.

Conclusions

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

Stephen Brown

INSPECTOR