
Appeal Decision

Site visit made on 2 October 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 23 October 2020

Appeal Ref: APP/P0119/C/19/3227019

Sturden Lodge, Pye Corner, Hambrook, Bristol, BS16 1SQ

- 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 Mrs Shirley Maltravers against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, numbered C)M/18/0316/OD/2 was issued on 19 March 2019.
 - The breach of planning control as alleged in the notice is
 - a) the erection of a building for storage use (use class B8);
 - b) the laying of hardstanding; and
 - c) the siting of a metal container functioning as a storage building.
 - The requirements of the notice are
 - a) Demolish the building marked '1' on the land edged red on the plan attached to the notice and shown on the photographs attached to the notice, and remove the resultant materials from the land edged red;
 - b) Remove the hardstanding hatched green on the attached plan at the land edged red and shown on the attached photographs; and remove the resultant materials from the land edged red;
 - c) Remove the metal container mark '2' at the land edged red on the attached plan and shown on the attached photographs from the land edged red; and
 - d) Return the land edged red on the attached plan to its condition prior the breach taking place
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: Notice upheld following variation and planning permission refused**
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The appeal site and relevant planning history

1. The appeal site is about 1.9 hectares located outside the Hambrook settlement boundary and is within the Bristol and Bath Green Belt and the River Frome and Oldbury Court Estate Site of Nature Conservation Interest. The appellant runs a lawful demolition and diamond drilling company Anquale Ltd from the site and also resides on the site.
2. On the upper part of the site is a dwelling with attached storage with access to an underground storage area containing equipment associated with the appellant's business.
3. The building, hardstanding and container subject to the notice and used in connection with the business, are set within a former quarry in the centre of the site at a lower level to the house, with woodland to the north, south and west,

and the Bradley Brook at a lower level. The building is clad in green profile sheeting with a monopitch roof. It has two large roller shutter access doors and a pedestrian door at the rear. At the time of my visit it contained electric power equipment and generators amongst other items and it had a raised platform at one end of the building. Outside, I was unable to gain access to the interior of the container which I was advised contained hand tools. A store of plate glass, a storage tank for red diesel, concrete blocks, various tools and miscellaneous building materials were stored on the hard standing or adjacent to it. Vehicular access to the building and hard standing is from a separate access to that providing access to the dwelling/storage buildings on the upper part of the site.

4. Following a Planning Contravention Notice, the appellant submitted a retrospective planning application for the erection of an outbuilding for storage use (use class B8) and associated hardstanding which was refused in March 2019 (PT18/5169/F) due to the proposals representing inappropriate development in the Green Belt.

Appeal on ground (d)

5. An appeal on this ground is that it is too late to take enforcement action. The appellant states that the building subject to the notice was completed in June 2017 and is used for plant storage. The hardstanding was laid in March 2018 and is also used for open storage. However, the metal container is stated to have been on the site since at least 13th July 2013 and is used for tool storage and is therefore immune from enforcement action through the passage of time. The only evidence submitted to support this contention is an aerial image dated 13 July 2013.
6. In an appeal on legal grounds, the onus of proof is on the appellant and the level of proof is on the balance of probability. That image dated 13 July 2013 appears to show two features that do not appear on the earlier aerial photographs contained in Appendix 6 of the appellant's statement. One of the features might be a container with what could be a tank on its roof but it is too indistinct and ambiguous to confirm with the required degree of certainty what the feature actually is. The appellant has not submitted any further evidence, such as a Statutory Declaration, or dated ground level images, in respect of the period of time that the container has been in situ for me to reasonably conclude that the container is immune from enforcement action.
7. The appeal on this ground fails.

Appeal on ground (a)

8. An appeal on this ground is that planning permission should be granted for what is alleged in the notice.
9. The main issues are:
 - a) whether the development represents inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - b) the effect on the openness of the Green Belt;
 - c) the effect on the character and appearance of the area; and

- d) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.
10. The Framework at paragraph 133 states that 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 their permanence" (para 133).
 11. At paragraphs 145 to 146 the Framework states that the construction of new buildings is inappropriate except for specified exceptions. The development does not fall within the exceptions identified although the appellant puts forward a case that the site falls within the category of 'limited infilling in villages'. In support of the argument, the case of *Wood v SSCLG* [2014] EWHC 683 (Admin) is cited in which it was held that a village boundary as designated in the development plan was not determinative on the point, but that it is for the decision maker to consider as a matter of fact, whether a site is in a village.
 12. The appellant considers the site to be part of the functional village of Hambrook to the east of the M4 but recognises that it is not included within either of the two defined infill boundaries and that the limitations of South Gloucestershire Local Plan Core Strategy Policy CS5 apply to the site.
 13. Having regard to the immediate geography of the area I have no doubt that, as a matter of fact, the site forms part of the open countryside and is physically distinct from other parts of the village. This distinction is evident through the existence of open fields to the east of Bristol Road, the field forming the upper part of the appeal site, and the fall and woodland character of the land towards the Bradley Brook, beyond which is part of the village along Quarry Barton. Although there is a substantial railway viaduct to the north of the site, this does not sever the countryside but allows the substantial extent of woodland to continue visually and functionally underneath and beyond it.
 14. The courts have held that openness of the Green Belt has a spatial aspect as well as visual aspect. The size of the building is substantial and coupled with the current and potential extent of outside storage on the hard standing (and the fringe areas), the storage container is harmful to the openness of the Green Belt.
 15. I therefore conclude on the first two issues that the development is inappropriate in the context of the Framework and the development plan, and that it does not preserve the openness of the Green Belt. I attach substantial weight to these conclusions.
 16. Although the siting of the building is set down into the quarry where its visual impact is reduced and it has been constructed in a green profiled metal cladding, the building nevertheless appears somewhat industrial and affects the character and appearance of this woodland site to some degree. This is exacerbated by the extent of the hard standing and associated storage, together with the presence of the storage container with its industrial appearance. The activity on the site involving the comings and goings of commercial vehicles also affects the character of the woodland. The adverse effects of the development would be greater in the winter when the site would be more visible in the absence of foliage when viewed from Quarry Barton.

17. The building's design conflicts with the requirements of Policy CS1 and fails to have regard to Policy PSP1 of the South Gloucestershire Local Plan: Policies, Sites and Places relating to local distinctiveness. I conclude on this issue that the development is harmful to the character and appearance of the area and to which I attach moderate weight.

Other considerations

18. The appellant states that the appeal site is in a mixed use of C3 residential, B1 business and B8 storage that has existed for over 25 years. The growth of the business over recent years has necessitated the need for extra machinery and, therefore, extra secure storage which is not available elsewhere on the site. The old storage is accessed via a steep ramp and the roof height is too low to accommodate large machinery. The appellant states that it is not viable for the business to pay to rent additional storage space off-site and further confidential information has been submitted to support this. It is stated that the building is required in order to house machinery which is too big for shipping containers; to house electrically operated machinery which not be stored outdoors; and, because of the security risk. The appellant also says that the development allows a local business to continue to trade from the site which provides employment; and that the business has taken 3 new employees in the last two years providing full-time permanent employment for eight people locally along with occasional work for local subcontractors.
19. The appellant also says that the development improves upon the position prior to its construction as the site housed 5 metal containers (one of which is still on site and subject to the notice) which had been in situ for over 4 years and would therefore have been immune from enforcement action. However, no evidence has been provided to show that this was the case and these additional containers have not been identified by the appellant on any of the submitted aerial photographs to support this hypothetical fallback position.
20. The Framework and local policies protect rural employment subject to Green Belt policy. Policy PSP28 sets out where new buildings and business expansion would be acceptable.
21. I note that the access arrangements from the building is via the track to a field gate on the Bristol Road which the Council considers does not achieve the desired standard of visibility.
22. The site is within a Site of Nature Conservation Interest where a compensatory scheme of tree planting would be required to overcome any ecological and landscape impacts of the development.
23. I am satisfied that both an access improvement and a tree planting scheme could be the subject of appropriate conditions in the event that planning permission were to be granted.

The planning balance

24. I have found that the development is inappropriate development in the Green Belt that does not preserve its openness and to which I attach substantial weight. Additionally, the development is harmful to the character and appearance of the area and to which I attach moderate weight. In support of the development, issues relating to vehicular access and to landscaping could be subject to appropriate conditions and make the development more acceptable in

planning terms. There would also be benefits arising in the context of local employment and the rural economy assuming that the business would otherwise cease, although it does not automatically follow that this would be the outcome. Whilst I attach moderate weight to these other considerations, I find that the harm caused by inappropriateness and to openness, and through the effect on the character and appearance of the area, not to be outweighed by these other considerations so as to amount to very special circumstances required to justify the development.

25. The appeal on this ground fails.

Appeal on ground (g)

26. The appellant considers that the 9 month compliance period is not reasonable and that a period of 24 months would be necessary to secure alternative nearby, secure, storage premises elsewhere. The removal of the building, container, hardstanding and contents would be a time-consuming task.

27. The Council consider that a 2 year compliance period would be tantamount to a temporary planning permission and I concur with that view.

28. The unauthorised development should be removed within a reasonable period in order to overcome the harm I have identified. I consider that the compliance period is adequate to carry out the requirements of the notice but in view of the difficulties associated with COVID-19 I shall extend the compliance period to 12 months, which will provide an additional period for the appellant to make alternative arrangements.

29. The appeal on this ground succeeds to a limited extent.

Conclusions

30. For the reasons given above I conclude that a reasonable period for compliance would be 12 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

31. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied: by the deletion of 9 months and the substitution of 12 months as the period for compliance. Subject to these variations the enforcement notice is upheld.

P N Jarratt

Inspector