



Appeal Decision

Site visit made on 24 November 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/C1950/C/20/3250032

Land at Beavers Lodge Farm, Tylers Causeway, Newgate Street Village, Hertford SG13 8QN

- 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 Daniel Green against an enforcement notice issued by Welwyn Hatfield Borough Council.
- The enforcement notice was issued on 17 March 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of two buildings; plus the siting of four shipping containers.
- The requirements of the notice are: (i) Demolish and remove from the land the two buildings labelled A and B. (ii) Remove from the land the shipping container labelled C. (iii) Remove from the land the shipping containers labelled D. (iv) Remove from the land all materials, debris, waste, plant and equipment associated with requirements (i) to (iii) above.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

Ground (a) appeal

Main Issues

1. The appeal site is in open countryside within the Metropolitan Green Belt. Therefore, the main issues in this ground of appeal are:
 - Whether erection of the buildings and siting of the shipping containers is inappropriate development, having regard to the Development Plan and the National Planning Policy Framework (the Framework).
 - The effect on the openness and purposes of the Green Belt.
 - The effect on the character and appearance of the surrounding countryside.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the development.

Reasons

Whether the buildings and containers are inappropriate development

2. The site contains a complex of farm buildings, including the appellant's dwelling. The enforcement notice attacks two detached buildings erected in a corner of the site. The buildings occupy part of the footprint of a demolished farm building. The buildings are single storey, they have a rectilinear plan form and one building is slightly larger than the other. The walls are constructed of blocks faced with brickwork and contain white UPVC framed double glazed windows and doors. Both buildings have equal pitched roofs covered with concrete tiles. During my visit, I observed that although weathertight, both buildings are a shell internally and contain various items including building materials and equipment. The notice also attacks four shipping containers, one of which is sited on an edge of the farm complex, the other three being grouped together further into the site.
3. Policy GBSP1 of the Welwyn Hatfield District Plan (DP) seeks to maintain the Green Belt but otherwise does not explain how development is to be managed. At paragraph 145, the Framework advises that the construction of new buildings in the Green Belt should be regarded as inappropriate development, apart from certain exceptions. The paragraph 145 (a) exception applies where a building is for agricultural use. The paragraph 145 (d) exception applies where a replacement building is in the same use and not materially larger than the one it replaces.
4. The buildings are not materially larger than that which they have replaced; they have an overall footprint and bulk which is significantly smaller than that of the demolished building. The appellant intends to use both buildings for the intensive rearing of pigs. I am given to understand that prior to becoming dilapidated, the demolished building had been used for a similar purpose over many years. The appellant described how the buildings could be fitted out to accommodate rows of pig pens, with a central access corridor and areas for storage of equipment and bedding. Illustrations of buildings used for pig rearing and details of the typical floor area requirements for such use were supplied. Consequently, although neither building is currently in use for pig rearing, I have no doubt that in terms of the floorspace available, they could accommodate such activity.
5. Be that as it may, relevant case law confirms the particular importance of the design of a building in judging its purpose. As planning permission runs with the land, the purpose of a building is not dependent on the owner's intentions. A building might be capable of being used for agriculture, even though it had been designed for a different purpose. Whether a building is capable of being used for a particular purpose is therefore not the only relevant factor; account must still be taken of the essential character or design of the building¹. It follows that for the buildings to be regarded as having the same use as the demolished building, they must be designed for agriculture.
6. The materials of construction, arrangement and number of elevational openings of domestic scale and the use of UPVC framed doors and windows, have all given the buildings an obviously residential character and appearance, not dissimilar to that of the appellant's dwelling. The materials and character and

¹ *Chichester DC v First Secretary of State* [2006] EWHC 1876 (Admin).

appearance of the buildings are markedly different to the simple, functional materials, unassuming characteristics and visual qualities of most other rural buildings at the site and in the surrounding area and are also untypical of contemporary farm buildings. Neither are the materials, character and appearance of more traditional agricultural structures respected or reflected in the design of the buildings.

7. The buildings' standard of construction, incorporating cavity walls faced with brickwork, double glazed windows and doors and tiled roofs, is highly unusual for structures in agricultural use and is normally associated with residential buildings. My attention was not drawn to any examples of agricultural buildings where similar materials or a comparable standard of construction had been employed. There was no firm evidence to show that similar levels of structural strength, thermal efficiency and controls over condensation could not be achieved by using the materials and simpler construction methods generally employed in contemporary agricultural buildings. Although the buildings' construction materials might well include those sourced from the farm or recovered second-hand from elsewhere, cost factors alone do not go very far towards showing that they have been designed for agricultural purposes. I understand that the buildings are not connected to a foul drainage system and there is a question mark over whether there would be compliance with the Building Regulations. However, there is nothing to indicate that the buildings could not be altered to address such matters with relative ease.
8. The buildings can be accessed only by a pedestrian door and a pair of French doors. However, large entrances are usually a feature of agricultural buildings, enabling the ease of movement of livestock, feed and mechanical equipment. The access arrangements do not reflect the illustrative details supplied by the appellant, which showed much larger entrances providing direct access to a central corridor. In practice, given the relatively limited width of the door openings and their location at right angles to the proposed central corridor, the buildings are likely to be awkward to access and egress, other than perhaps by an individual farm worker with hand-held items of equipment or by one or two livestock at a time. Whilst the appellant intends to undertake most activity within the buildings manually, I am not assured such labour-intensive methods are practical or sustainable in the medium term. No details were supplied to indicate that the buildings' accessibility and the appellant's proposed methods of farming were typical of modern agricultural buildings used for a similar purpose. Therefore, in my view the access and egress arrangements are unduly restrictive, in practice they are unlikely to be efficient having regard to the intended use and they do not provide for ease of adaptation in the event of future changes to agricultural activity at the site.
9. Furthermore, the extent and nature of the glazing incorporated within the walls of the buildings is relevant. Some glazing is likely to be necessary to provide sources of natural light to the interior of the buildings. Even so, the substantial proportion of double glazing is likely to result in significant solar gain and heat retention within the buildings, particularly during the summer months. Whether opening the windows would provide sufficient regulation of the temperature within the buildings or provide adequate ventilation for the livestock is unclear; the appellant did not offer a detailed explanation in these respects. The buildings in the illustrative details supplied did not incorporate extensive areas of double glazed windows. Therefore, on the basis of the

information before me I remain to be convinced that the buildings are able to provide a suitably controlled environment in which to accommodate livestock.

10. For the above reasons, I am not persuaded that the buildings have been designed for agricultural purposes. The lack of firm evidence to show that the design of the buildings is in conformity with any relevant industry codes of practice or standards serves to reinforce my conclusions in this respect. Imposing a condition restricting the use of the buildings to agriculture would not prevent a future change of use. Whilst I do not doubt that the appellant fully intends to fit out and use the buildings for agriculture that can only be afforded limited weight, as a future owner could have different intentions. Therefore, the exceptions at paragraph 145 (a) and (d) of the Framework do not apply to the buildings.
11. The appellant stated that the containers were used for agricultural purposes, including secure storage for livestock feed and equipment and as field shelters. I am also given to understand that two containers replaced two previously removed from the farm. However, little detailed information was provided to show precisely how the containers are used. No details were provided concerning any livestock or other ongoing agricultural activity at the farm. The Council stated that in visits made to the farm since 2016, no livestock had been witnessed and none were obviously in evidence when I visited. I was unable to view the interiors of any containers during my visit, as I was informed by the appellant that they were securely locked. Accordingly, there is no firm evidence to show that the containers are in agricultural use and the exception in paragraph 145 (a) does not apply. For similar reasons, the exception at paragraph 145 (d) also does not apply.
12. Therefore, the buildings and containers constitute inappropriate development in the Green Belt and are inconsistent with the Framework paragraph 145. The failure to maintain the Green Belt does not accord with DP Policy GBSP1. There is also conflict with Policy SADM 34 of the Council's emerging Local Plan (LP), on account of the failure to accord with national policy.

Effect on Green Belt openness and purposes

13. The Framework paragraph 133 advises that one of the essential characteristics of a Green Belt is its openness.
14. Due to the significant reduction in the overall footprint and built envelope of structures on the farm following the demolition works undertaken, the buildings and containers have had no adverse effect on openness in spatial terms. However, openness is also capable of having a visual aspect. Compared with the unassuming appearance of what they have replaced, the buildings are viewed as obviously residential built features in the otherwise predominantly rural surroundings. This has contributed to an erosion in the perception of openness in their environs. The containers are of considerable size and overall bulk, both individually and cumulatively. Stationing the containers has meant that parts of the site previously likely to have been perceived as open are now seen as being occupied and enclosed by, or adjacent to, built forms. The reduction in openness due to the presence of the buildings and containers is apparent in views from the public highway to the south, around the farm entrance.

15. Accordingly, the buildings and containers have resulted in a modest yet appreciable adverse effect on the openness of the Green Belt. This does not accord with DP Policy GBSP1 as the Green Belt is not maintained, it is inconsistent with the Framework paragraph 133 and is in conflict with LP Policy SADM 34. The buildings and containers have also amounted to encroachment into the countryside, being inconsistent with one of the purposes of including land within the Green Belt set out in paragraph 134 of the Framework. Substantial weight must be given to the totality of the harm to the Green Belt, as advised in the Framework paragraph 144.

Character and appearance of the surrounding countryside

16. The site is in gently undulating countryside comprising a patchwork of open fields bounded by hedges and interspersed with occasional tracts of woodland, also containing scattered farmsteads accessed by narrow lanes. As a result, the environs of the site and the surrounding countryside have an attractive and overwhelmingly rural character and appearance.
17. The buildings are adjoined by built forms of varying scale and external materials which make up the site. The demolished building possessed a character and materials largely consistent with its rural surroundings and as such was an accepted built feature in its setting. Although significantly smaller than the demolished structure, the external materials and obviously residential appearance of the buildings nevertheless contrasts starkly with the rural character and appearance of older buildings at the site together with those in the surrounding area and is entirely at odds with the prevailing rural character of the locality. Consequently, the buildings are seen as alien features in the otherwise rural setting, imbuing the site and its environs with a significantly more urbanised feel.
18. Due to their situation within or, in one instance, at an edge of the site, the containers are generally viewed in conjunction with rural buildings which are significantly larger in scale. Nevertheless, the angular, box-like profiles, utilitarian materials and mostly strident colours of the containers are entirely at odds with the rural appearance and more rustic qualities of the materials of adjacent older rural buildings and the softer, naturalistic contours and muted tones of the surrounding countryside. Therefore, individually and cumulatively the containers appear as alien features in their otherwise rural setting, lending the site and its environs an appreciably more 'industrialised' appearance.
19. Consequently, the buildings and containers have significantly and harmfully eroded the character and appearance of the surrounding countryside. This fails to accord with DP Policy RA10, as the buildings and containers do not conserve the local landscape character. As the buildings and containers do not respect and relate to the character and context of the area, there is also failure to accord with DP Policy D1 and Policy D2, whilst the failure to achieve a well-designed place or to conserve the natural environment is inconsistent with chapters 12 and 15 of the Framework.

Other considerations

20. It appears that one container is no longer in the approximate position shown on the plan attached to the notice, having been moved to a different location at another edge of the farm complex. However, as the deemed application arising

from the ground (a) appeal is solely concerned with the planning merits of what has been alleged in the notice, this has no bearing on my decision.

Green Belt balance

21. The buildings and containers constitute inappropriate development in the Green Belt, adversely affecting its openness and one of its purposes and also harmfully eroding the character and appearance of the surrounding countryside. There are no considerations that clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify permitting the buildings and containers do not exist.

Conclusion on Ground (a)

22. The buildings and containers do not accord with the Development Plan, they are inconsistent with the Framework and conflict with emerging LP policy. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (f) appeal

23. The ground of appeal is that the requirements of the notice are excessive.
24. At s173 (4), the Act provides that an enforcement notice can have two purposes, namely: (a) remedying a breach of planning control, including by restoring the land to its condition before the breach took place, or; (b) remedying any injury to amenity caused by the breach.
25. The notice does not specify which of the above purposes is relevant in this case. However, the allegation is the erection of buildings and the stationing of containers without planning permission. The requirements are to demolish the buildings and remove the containers. The requirements do not, for example, seek to alter the buildings to a point where amenity is no longer adversely affected, or seek a re-siting of the containers to achieve a similar end. Therefore, the purpose of the notice must be to remedy the breach by restoring the site to its condition before the breach took place.
26. Given the above context, the notice requirements are not unreasonable. Anything that stopped short of requiring the demolition of the buildings and removal of the containers would not remedy the breach and so would not achieve the purpose of the notice. It follows that rendering and painting the external walls of the buildings or re-siting the containers do not represent obvious alternatives to the notice requirements.
27. Accordingly, the notice requirements are not excessive and the ground (f) appeal fails.

Ground (g) appeal

28. The ground of appeal is that the period for complying with the notice requirements is unreasonably short.
29. Demolishing the buildings and removing their materials together with the containers are likely to be relatively straightforward operations, not involving specialist plant or equipment. As there are likely to be a range of contractors with relevant experience, arranging for one to undertake the works should not be an unduly lengthy process. Also, it is likely to be a reasonably straightforward matter for an experienced contractor to complete such works

within a few months at most. Therefore, extending the period for compliance to twelve months would perpetuate the breach of planning control and its associated planning harm.

30. Nevertheless, I am mindful that the works are likely to result in the appellant incurring considerable costs and are also likely to involve the need to reorganise some of the activity at the farm. As a result, it is necessary to ensure that disruption to the appellant's business is minimised as far as possible. I have also considered the possibility of the works being delayed, due either to exceptional weather conditions over the winter period or factors associated with the COVID-19 pandemic. Therefore, in my view a compliance period of six months would strike a fair balance between remedying the breach in a timely fashion, whilst providing the appellant with a sufficient period in which to organise for and have the required works carried out.
31. Accordingly, the ground (g) appeal succeeds to that limited extent.

Conclusion

32. For the reasons given above I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application.

Formal Decision

33. It is directed that the enforcement notice be varied by at paragraph 6 (time for compliance) replacing "four months" with "six months". 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 as amended.

Stephen Hawkins

INSPECTOR