



Appeal Decision

Site visit made on 9 November 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2021

Appeal Ref: APP/C3240/C/20/3246361

Land to the east of Rodenhurst Lane, Rodington, Shrewsbury SY4 4QT

- 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 Graham Davies against an enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice was issued on 6 January 2020.
- The breach of planning control as alleged in the notice is the change of use of the land from agricultural to a landscape gardening business storage yard and the associated creation of a hardstanding area and formation of earth bunds.
- The requirements of the notice are:
 1. Cease the use of the land for the running of a landscape gardening business.
 2. Remove all vehicles, items, containers, earth, materials and any other paraphernalia associated with the landscape gardening business from the land.
 3. Remove all stone and hardcore laid to create a hardstanding area within the area shown hatched and marked 'A' on the attached plan and return the land to its previous condition and use as agricultural land; and
 4. Remove from the land the earth bunds shown hatched blue on the attached plan and return the land to its previous condition and contours as agricultural land.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Ref: APP/C3240/C/20/3246362

Land to the east of Rodenhurst Lane, Rodington, Shrewsbury SY4 4QT

- 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 Ms Denise Davies against an enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice was issued on 6 January 2020.
- The breach of planning control as alleged in the notice is the change of use of the land from agricultural to a landscape gardening business storage yard and the associated creation of a hardstanding area and formation of earth bunds.
- The requirements of the notice are:
 1. Cease the use of the land for the running of a landscape gardening business.
 2. Remove all vehicles, items, containers, earth, materials and any other paraphernalia associated with the landscape gardening business from the land.
 3. Remove all stone and hardcore laid to create a hardstanding area within the area shown hatched and marked 'A' on the attached plan and return the land to its previous condition and use as agricultural land; and

4. Remove from the land the earth bunds shown hatched blue on the attached plan and return the land to its previous condition and contours as agricultural land.
- The period for compliance with the requirements is four months
- The appeal is proceeding on the grounds set out in section 174(2) (b) 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.

Appeal Ref: APP/C3240/C/20/3246363

Land to the east of Rodenhurst Lane, Rodington, Shrewsbury SY4 4QT

- 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 Gareth Davies against an enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice was issued on 6 January 2020.
- The breach of planning control as alleged in the notice is the change of use of the land from agricultural to a landscape gardening business storage yard and the associated creation of a hardstanding area and formation of earth bunds.
- The requirements of the notice are:
 1. Cease the use of the land for the running of a landscape gardening business.
 2. Remove all vehicles, items, containers, earth, materials and any other paraphernalia associated with the landscape gardening business from the land.
 3. Remove all stone and hardcore laid to create a hardstanding area within the area shown hatched and marked 'A' on the attached plan and return the land to its previous condition and use as agricultural land; and
 4. Remove from the land the earth bunds shown hatched blue on the attached plan and return the land to its previous condition and contours as agricultural land.
- The period for compliance with the requirements is four months
- The appeal is proceeding on the grounds set out in section 174(2) (b) 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.

Preliminary Matter

1. The appellants' initial appeal submissions were based on grounds (a) and (g) for appeal APP/C3240/C/20/3246361 and ground (g) only for appeals APP/C3240/C/20/3246362 and APP/C3240/C/20/3246363. However, their statement of case also made out grounds (b), (c) and (f) appeals. After raising this matter with the parties, the appellants subsequently confirmed that they wish to proceed with the ground (b) appeals in addition to grounds (a) and (g), but not on grounds (c) and (f). Therefore, I have determined the appeals on the basis of grounds (a), (b) and (g) for appeal APP/C3240/C/20/3246361 and grounds (b) and (g) for appeals APP/C3240/C/20/3246362 and APP/C3240/C/20/3246363.
2. The appellants contend that the land either side of the access track is not used for landscape gardening storage and therefore should not be included in the enforcement notice (the Notice). Whilst this part of the site is not used for landscape gardening storage, based on the evidence before me, including the observations I made during my site visit, it is contiguous with the storage yard area, mainly due to its enclosure by the earth bund on its northern boundary, and therefore together forms a single planning unit. Therefore, it is not unreasonable for it to be included within the plan attached to the Notice.

The ground (b) appeals

3. An appeal on ground (b) is that, on the balance of probabilities, the breach of control alleged in the notice has not occurred as a matter of fact. The onus of proof is on the appellant.
4. Throughout their statement of case, the appellants state that in addition to its use as a landscape gardening business storage yard, the appeal site is also used for agricultural purposes. At the time of my site visit there was clear evidence that it was being used for agricultural purposes; there was a tractor, two agricultural type trailers, various materials such as fencing, hay bales and a manure pile as well as other agricultural paraphernalia. In addition, on the parcel of land adjacent to the access into the site, there was a sow and 12 offspring in two separate fenced off paddocks and two chicken runs housing a total of 35 chickens. Therefore, the current use of the land is a mixed use of agriculture and a landscape gardening business storage yard as opposed to the sole use of a landscape gardening business storage yard as alleged in the Notice.
5. However, my consideration of the ground (b) appeals is on the basis of whether or not the matters alleged in the Notice had occurred at the time the Notice was served, not what is currently taking place on the site.
6. The Council's evidence includes four photographs dated 26 September 2019. These photographs are taken within the storage yard area and indicate various vehicles, tools and machinery that would typically be used in association with a landscape gardening business as well as a storage container and mobile office. None of these photographs depict any items associated with an agricultural use. Furthermore, they do not indicate any livestock being kept on the site at the time.
7. I note that the date of these photographs is over three months prior to the date on which the Notice was issued. However, there is no evidence before me that the current agricultural items and livestock were brought on to the land during this intervening period, before the Notice was issued. Accordingly, based on the evidence before me, on the balance of probabilities, I am satisfied that the matters alleged in the Notice occurred at the time the Notice was issued and that any mixed use of the land comprising agriculture and a landscape gardening business storage yard commenced after the Notice was issued.
8. The ground (b) appeals therefore fail.

The ground (a) appeal and the deemed planning application

Preliminary Matter

9. Planning permission is sought for the use of the area marked 'A' on the plan attached to the Notice as landscape storage and agricultural storage. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control "whether in relation to the whole or any part of those matters". The use of the land for landscape gardening storage is included in the matters alleged in the Notice. However, the use of the land for agricultural purposes is not. Accordingly, I cannot consider the use of the land as a mixed use of landscape gardening storage and agriculture as part of the deemed planning application as to do so would go beyond the provisions of s177(1)(a).

Main Issues

10. The main issues are whether the appeal site represents a suitable location for the development; the effect of the development on the character and appearance of the area; and, the effect of the development on public safety, with regard to the public footpath that crosses the appeal site.

Location

11. Policy SP3 of the Telford and Wrekin Local Plan (LP) 2018 states that the Council will support development in the rural area where it addresses the needs of rural communities. It goes on to state that development is directed to the reuse of previously developed land and to settlements with good infrastructure.
12. The appellant argues that the landscape gardening business has many clients in the rural area and therefore a rural location is needed for the business. However, there are likely to be potential existing sites available within established industrial estates or similar that have equally good access to the appellant's rural clients. The Rodington Business Park is a good example of such a site as it is an industrial estate but has equally good access to the surrounding rural area as the appeal site does. Therefore, I do not consider that the storage yard must be located within a rural area.
13. It is also argued that the site is a sustainable location as it has access to public transport and Rodington has been considered to be a sustainable location for development in the past. However, the past development the appellant refers to was residential development, which has significantly different characteristics to the landscape gardening business. For example, the proximity of a dwelling to public transport could be a significant benefit as the occupants of the dwelling would likely use it to travel to services, facilities and employment. However, the proximity of the appeal site to public transport is less beneficial. As the appeal site is used as a storage yard, it seems unlikely to me that the employees of the business would use the local bus service to visit services and facilities. Therefore, I attribute the accessibility of the site to public transport very limited weight in favour of the development.
14. The appellant also contends that the development satisfies Policy EC3 of the LP, which supports new employment development in the rural area where it involves the re-use of previously developed land or the conversion/re-use of redundant buildings or the extension of existing sites, subject to meeting three requirements. I do not accept the appellant's argument that the use of the land as alleged for the past five years means it is now previously developed land. Land cannot possibly attain such a benefit as a result of its unauthorised use. As its previous lawful use was agriculture, it is not previously developed land. Similarly, it does not comprise the conversion/re-use of redundant buildings or comprise the extension of an existing site. Therefore, it does not comply with any of the three requirements.
15. The appellant claims that the landscape gardening business does not require a building and therefore Policy EC3 does not entirely fit with its requirements. However, Policy EC3 does support businesses that do not require buildings providing they comprise previously developed land, which in this case it does not.
16. Notwithstanding this, Policy EC3 goes on to state that where it can be demonstrated that no suitable building capable of conversion/re-use is available

or the re-use of previously developed land is not available or is unsuitable, new development will be supported. The appellant has carried out research into various alternative sites and despite numerous sites being considered none were found to be suitable to meet the needs of the business. Nevertheless, the three requirements in the first paragraph of the policy must still be met for the development to comply with it.

17. The Council raise no objection to the capability of the local highway network being able to accommodate the development. I find no reason to conclude otherwise. Therefore, requirement (ii) is satisfied. Requirement (i) is that the development relates to agriculture, forestry or assists in the diversification of the rural economy. The development does not relate to agriculture or forestry. Whilst the landscape gardening business does have rural based clients it does not assist in the diversification of the rural economy. It does not need to be located within a rural area to serve the needs of those living in the rural area. The appellant contends that the business provides much needed additional income to the small holding. However, it seems to me that due to its scale, the business does not represent a form of diversification from the agricultural use of the appellant's small holding, but rather a standalone business that is the primary source of income. Overall, I do not consider that it falls within Policy EC3's meaning of 'diversification of the rural economy' and as such fails to satisfy requirement (i).
18. With regard to requirement (iii), the business employs local people. These employees would then likely spend money in local shops and services. Therefore, the development, in this regard, does support the local economy.
19. Overall, whilst the development satisfies requirements (ii) and to a lesser extent (iii), it fails to satisfy requirement (i).
20. I note that the explanatory text to Policy EC3 states that the Council will provide flexibility to develop diversification opportunities. However, this flexibility is built into the wording of the policy itself within its final paragraph. I do not consider that the reference to flexibility in the explanatory text is to be interpreted as being flexible beyond the wording of the policy. To do so would significantly undermine the policy. I find therefore that the development as alleged in the Notice fails to satisfy Policy EC3 of the LP.
21. I find therefore that the appeal site does not represent a suitable location for the development. As such, it is contrary to Policy SP3 and EC3 of the LP. As a consequence, it is also contrary to Policy SP4 of the LP, which seeks to promote sustainable development.

Character and appearance

22. The appeal site is located in an area of open countryside characterised by verdant agricultural fields interspersed by farmsteads and clusters of dwellings. The landscape has a relatively flat topography, allowing medium to long views across the countryside, with fields generally bounded by hedgerows and trees. The small village of Rodington lies a short distance to the south of the site and Rodington Business Park lies to the north.
23. The appeal site comprises a short track leading off Rodenhurst Lane that leads to the storage yard area of the site. An earth bund has been created that encloses the yard, with gaps in it to provide access from the track and access to the

- footpath that runs across the site from east to west. A gap has also recently been created in the north section of the bund to provide a gated access into the adjacent field. A bund also runs along the southern boundary of the footpath between the yard and Rodenhurst Lane.
24. The earth bunds screen much of the yard and the items stored on it from views off Rodenhurst Lane. However, the bunds themselves are clearly visible. As a result of their height, width and significant length they appear incongruent in the context of the surrounding flat topography. The appellant argues that such bunds are common agricultural features. Be that as it may, they are not common features in the local landscape, where site boundaries typically comprise hedgerows, trees and stockproof fencing.
25. In addition, when walking along the section of footpath between Rodenhurst Lane and the storage yard, the earth bund on its southern boundary is an imposing and oppressive feature that obliterates what would otherwise have been relatively open views to the south, such as those enjoyed to the north of the footpath.
26. Notwithstanding the storage yard being well screened from views off Rodenhurst Lane, it is clearly visible from the section of the public footpath that runs through it. The various items, materials, plant and machinery within the site creates a form of visual clutter that is in stark contrast to the surrounding verdant fields and therefore significantly detracts from the character and appearance of the area. Furthermore, the commercial character of the yard jars with the general agricultural character of the surrounding landscape. Whilst Rodington Business Park is nearby, this is a well contained site. The appeal development encroaches further into the open countryside, eroding its intrinsic rural character.
27. The appellant argues that the site has no specific landscape or environmental designations. Nevertheless, it is within the open countryside which has its own intrinsic value and should be protected for its own sake.
28. I have considered the appellant's intentions to use the large earth mound near the entrance to the site to level some of the land off and to plant more trees. However, I do not consider that this will sufficiently mitigate the harm I have identified above.
29. I therefore find that the development significantly harms the character and appearance of the area, contrary to Policies BE1 of the LP, which, amongst other things, seeks to ensure that development respects and responds positively to its context and enhances the quality of the local natural environment; and, respects the landscape setting and topography. It also fails to accord with the design objectives of the National Planning Policy Framework.

Public Safety

30. At the time the Notice was issued, the earth bunds enclosing the storage yard prevented access to the section of the public footpath that runs across the yard. Gaps in the earth bunds have since been created to allow access to the footpath and therefore it is no longer obstructed.
31. Notwithstanding this, the storage yard is in active use. The manoeuvring of plant and machinery and the loading/unloading of materials would take place across the footpath, which runs through the centre of the yard. As a consequence, this poses a real risk to users of the footpath whilst crossing the yard who could

potentially come into conflict with moving vehicles and plant. Furthermore, there is the potential for the footpath to become further obstructed by materials stored on it or vehicles/plant parked on it.

32. In addition, the appellant's ambition to have a secure yard to store the business equipment would place pressure on the future blocking up of the footpath or additional security measures, such as security fencing, which in itself could be harmful to the character and appearance of the area.
33. I find therefore that the proposal represents an unacceptable risk to the users of the public footpath, contrary to Policy BE1 of the LP, which, amongst other things, seeks to ensure that development produces a secure environment which is safe.

Other Matters

34. The appellant argues that the Council did not raise any issue regarding the inappropriateness of the siting of Rodenhurst Business Park when they granted a certificate of lawful use for it. However, unlike a planning application, development plan policies are not a material consideration when determining an application for a certificate of lawful use and therefore whether or not the site was inappropriate should not have factored into the Council's decision.

Conclusion on the ground (a) appeal

35. I have had regard to the significant support received for the development from local residents. However, I do not consider that this support outweighs the significant harm the development has by reason of its unsuitable location and the harm to the character and appearance of the area and to public safety.
36. For the reasons given above, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

The ground (g) appeals

37. This ground of appeal is that the period for compliance is unreasonably short.
38. The period of compliance in the Notice is four months. The appellant states that six months would be 'necessary and justified'. However, no argument is made as to why it would be 'necessary and justified' or why four months is unreasonably short. Based on the evidence before me, I find no reason to conclude that four months is unreasonably short.
39. Therefore, the ground (g) appeal must fail.

Formal Decision

40. 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.

Alexander Walker

INSPECTOR