



Appeal Decision

Site visit made on 1 December 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 08 February 2021

Appeal Ref: APP/D5120/C/20/3251548

Land at Woollett Hall Farm, Water Lane, Sidcup DA14 5ET

- 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 Beck Evans 2000 Limited against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 18 March 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development including:
 - i) The laying of a hard surface shown in the approximate location hatched black on the Plan.
 - ii) The installation of 4 wall mounted lights, shown in the approximate location and marked with an 'X' on the north eastern elevation of the building marked with an 'A' on the Plan.
 - iii) The erection of 5 No. lighting columns shown in the approximate locations marked with the letter 'C' on the Plan.
 - The requirements of the notice are to:
 - i. Remove the hard-surface from the Land that is shown in the approximate location hatched black on the Plan; and,
 - ii. Remove all column lighting, and their poles from the Land, that are shown in the approximate location marked with a 'C' on the Plan; and,
 - iii. Remove four wall mounted lights shown in the approximate location marked with an 'X' on the Plan from the north east elevation of the building marked with an 'A' on the Plan; and
 - iv. Remove all resultant materials from the Land.
 - The period for compliance with the requirements is two months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) and the prescribed fee has been paid, an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and falls to be considered.
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Formal decision

1. The enforcement notice is corrected by the deletion of Requirements ii) and iii), and the replacement of Requirement ii) with the following wording:

"Remove the column lighting and their poles from the Land that are shown in the approximate locations marked with a 'C' within the area hatched black on the Plan".

Subject to this correction the notice is upheld.

2. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended insofar as it relates to the installation of the wall-mounted lighting, and also the installation of the column lighting and their poles situated outside of the area hatched black on the Plan, subject to the following condition:
 - 1) All lighting, hereby permitted, shall be removed within two months of the date of failure to meet any of the following criteria:
 - (i) Within one month of the date of this decision, full details as to the intensity, timing, and duration of illumination of the lights mounted on columns and also the wall-mounted lights, shall be submitted in writing to the local planning authority.
 - (ii) Within four months of the date of this decision the details shall have been approved in writing by the local planning authority or, if the local planning authority refuses to approve the details or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by Secretary of State.
 - (iii) Should the submitted details be approved proper adherence to these shall be observed and maintained thereafter. Should, however, an appeal be necessary but ultimately be unsuccessful then all lighting, the subject of the enforcement notice, shall be removed in full within two months from the final decision date.
3. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused, in respect of the hard-surface laid and the column lighting within the area hatched Black on the Plan.

Background

4. Woollett Hall farm has, in recent years, been developed with new buildings erected and has diversified with the introduction of commercial businesses at the site including a farm shop and restaurant that open between 8am and 5.30pm, 7 days per week. Another significant facility at the site is the 'Crayzee Barn' children's play centre which opens between 9am and 6.30pm, similarly 7 days per week. These buildings lie on flat land that opens out at the base of the access driveway, off Water Lane, which slopes down to the car park.
5. The car park serving the buildings is an expansive hard-surfaced area which, it would appear, has been extended throughout the stages of the farm's diversification. The additional parking area, the subject of this enforcement notice, is seemingly set aside primarily for staff/employee purposes although the appellant's representations refer to it as an "overflow".
6. The Appellant indicates that lighting has been introduced to the car park as well as a one-way traffic management system (incorporating speed humps) so as to safeguard visitors. The appellant stresses that the safety aspect is particularly important to increase visibility for drivers when there is a heightened risk of children. It is also said that the lighting is solar powered and therefore produces low-intensity light, operating on 30% productivity until a person approaches the light to reduce energy consumption and any associated light pollution.

7. On the basis that additional, formal car parking spaces and lighting – both of the column variety and those attached to the wall of the building – have been introduced the Council saw it expedient to issue the enforcement notice, now the subject of this appeal.

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

Main Issues

8. The site lies within the Metropolitan Green Belt. The main issues in this case are therefore:
 - 1) whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and, if so, the effect of the development on the openness of the Green Belt;
 - 2) whether the development would create any other harm; and
 - 3) if it is inappropriate development, whether the harm by reason of inappropriateness and by reason of any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development and Openness

9. The Framework says that the construction of new buildings should be regarded as 'inappropriate development' within the Green Belt. There are some limited exceptions to this which are set out in paragraph 145 of the document, although none appear to be applicable here.
10. Planning permission is required under s57 of the 1990 Act 1990 for the carrying out of any building operations which fall under the definition of development, as referred to in s55. In all such determinations much depends on the facts of each individual case and considerations are normally those of permanence, size and physical attachment.
11. The Courts' general approach in construing what works would amount to a "building operation" for this purpose is to consider whether the works carried out have resulted in the erection of a "building".
12. In the court judgement of *Skerritts of Nottingham Ltd -v- SSETR & Harrow LBC* [2000] it was held that the correct approach for any decision-maker is to consider the degree of permanence of any purported building as a question of fact in each particular case. This would then be construed in terms of significance in the planning context. More recently, in *R (Save Woolley Valley Action Group Ltd) v Bath and North Somerset Council* [2012] EWHC 2161 (Admin) the Court held that the Council had taken too narrow an approach to the meaning of "development" in s55, as the term "building" in s336(1) of the 1990 Act has a wide definition which includes "any structure or erection."
13. In this particular instance, and with regard to the above, the column lighting, in the planning context here, constitutes development requiring planning permission. The creation of additional car parking space, as an engineering operation – and for reasons I describe later – similarly requires the benefit of

planning permission. The four wall mounted lights attached to the Crayzee Barn building might be considered as more of a 'grey area', but the potential impact of these should be taken into account. However, with no clear distinction drawn between the levels of illumination from those mounted on the columns and those wall mounted, nor justification as whether the specified 3,000 and 4,000 lumens are warranted in such circumstances, I do not consider that the appellant has put forward a compelling case in this regard to support the DPA. Moreover, as the appellant has not lodged any Ground C appeal there is no dispute between the main parties as to whether planning permission is required for those matters enforced against, in their entirety.

14. On the above basis I am not convinced that the exceptions in paragraph 145 (b) and (c) of the Framework, which can be subject to interpretation, are applicable here. In the circumstances I am satisfied that the three entities involved in this appeal each constitutes unauthorised development and planning permission is necessary for their retention.
15. The appellant indicates that the actual use is not inappropriate, but that of a modest extension to a car park area facilitating existing lawful uses within the Green Belt. The enforcement notice issued, though, is only concerned with 'Operational Development' – it is headed so – and in terms of the additional car parking area, requires only that the hard-surfacing be removed.
16. Given the full context I therefore conclude that the development enforced against is 'inappropriate' in its Green Belt setting. Inappropriate development is, by definition, harmful to the Green Belt and the Framework indicates that it should not be approved except where very special circumstances can be demonstrated.
17. The Framework also indicates that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent sprawl by keeping land within it permanently open.
18. The matter of 'sprawl' is applicable here as it seems that what is already a substantial car park is being extended further. The enforcement notice identifies Woollett Hall Farm as a much wider site and the ability to have provided such a significant number of parking spaces for the businesses present is a likely consequence of this. As such, further loss of openness that results from additional hard-surfacing to formally accommodate additional vehicles at the site represents an insidious form of development. The lighting columns and wall-mounted lighting can similarly be seen to affect the Green Belt's openness, albeit to a more limited extent, and given the absence of firm detail as to illumination levels and restrictions thereof, little can be gleaned to support the case for such.
19. On this particular issue I therefore find that the presence of the development is in conflict with the Framework's objectives. Accordingly, the proposal would be harmful to the openness of the Green Belt, contrary also to, in this regard, the aims of policy 7.16 of the London Plan, policy ENV4 of the Council's Unitary Development Plan (UDP), and a certain proviso within policy CS01 of the Council's Core Strategy (CS).

Any other harm

20. The appellant's view that the lighting is necessary for security purposes in relation to both the Crayzee Barn and Farm Shop, and that it has been specifically chosen because it is solar powered with full illumination only triggered by sensors as a person approaches or walks beneath a light, would, on the face of it, suggest a satisfactory arrangement yet there is little technical detail to support the assertions. Such relevant information should be readily apparent from the 'Lighting Specifications', provided by way of the appellant's Appendix 3 yet, as mentioned, the information is very limited. The degree of spillage has not been shown and neither has it been demonstrated whether the illumination is currently within acceptable limits.
21. I am not therefore persuaded that sufficient detail is before me to conclude that these elements of the development are acceptable, and without restriction. It is insufficient to merely say, without qualification, that the lighting is low powered which safeguards the amenity of adjacent occupiers and mitigates any impact whilst, in being powered entirely from renewable sources, is a sustainable option.
22. In terms of their physical presence, however, the light columns themselves are reasonably slender and the four wall-mounted lights do not detract from the somewhat utilitarian building to which they are attached. From my findings, though, I must agree with the Council that increasing the amount of hard-surfacing for additional car parking has an urbanising effect. This coupled with uncontrolled illumination is particularly contrary to relevant advice in paragraph 127 of the Framework and, for this reason, I consider that the two lighting columns located within the overflow car park area enforced against are unnecessary in the circumstances.

Planning balance

23. In this case I have identified conflict with the Framework and relevant policies from the development plan. Material harm has resulted from the creation of additional car parking space and could also result from night time illumination without proper constraint.
24. Nonetheless, at my site visit I noted that the lighting faces downwards. To dismiss its presence out of hand and enforce against it without exploring whether or not it is an acceptable form of development and, if not, whether it could be effectively conditioned, achieves little. These are lawful businesses and facilities that just happen to operate within the Green Belt, and their attraction is evident by the size of the car park. Accordingly, a pragmatic approach is here called for.
25. As such, in the interests of the local economy, to facilitate the smooth running of the established enterprises at the site, and with due regard to security and the safety of staff and customers alike, I take the view that external lighting is reasonably required at the site. The wall-mounted lights are evenly spaced on the building's outside wall and the three lighting columns, outside of the 'hatched area', will aid the use of the car park during the winter months. However, as it stands, it would not be appropriate to grant an unrestricted planning permission on the DPA as, for obvious reasons, this should be subject to a suitably worded planning condition, allowing for mitigation, as may be necessary.

26. I have had regard to the grounds of objection in the representations received from interested parties, and these are largely covered in my decision letter. However, other matters highlighted as to archaeology and drainage issues have not been identified as areas of particular concern by the Council, and I have not been provided with any technical evidence to suggest otherwise.
27. In the circumstances and, on balance, I am satisfied, subject to the imposition of a retrospectively worded planning condition, and one associated with restrictions indicated by the appellant, that very special circumstances do arise here which, in part, outweigh the harm by reason of inappropriateness and the effect on the Green Belt's openness. The condition I am imposing in respect of the external lighting, is both reasonable and necessary and failure to adhere to the specified timetable, as worded, will require that the lighting be removed in its entirety.
28. The expansion of the car-park, as carried out, though, is unacceptable and cannot be satisfactorily mitigated.

Conclusion

29. In conclusion, and for the above reasons, I have corrected the enforcement notice, with the DPA made under section 177(5) allowed in part, subject to a condition in the interests of certainty and so as to allow for the intensity, timing and duration of the illumination to be known and properly controlled. Subject to this correction the enforcement notice is upheld. The appeal, therefore, succeeds in part.
30. S180 of the 1990 Act says that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as is inconsistent with that permission. That is the case here with the lighting installations.

Timothy C King

INSPECTOR