



Appeal Decisions

Inquiry Held on 20-22 July and 28 July 2021

Site visit made on 23 July 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Appeal A Ref: APP/R5510/C/19/3235757

Appeal B Ref: APP/R5510/C/19/3235758

Brookside, Moor Lane, Harmondsworth, West Drayton, Middlesex UB7 0AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Anthony Hall (deceased) against an enforcement notice issued by the Council of the London Borough of Hillingdon. Appeal B is made by Mrs Sheila Hall.
- The enforcement notice was issued on 23 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of land for waste storage and transport incorporating the parking of motor vehicles (including commercial and caravans); the stationing of portable buildings, skips and shipping containers; the erection of associated buildings and boundary fencing; scalping (used to create hardstanding); and other paraphernalia facilitating the use.
- The requirements of the notice are:
 - i. Cease the use of the land for waste storage and transport;
 - ii. Cease the use of the land for the parking and stationing of motor vehicles (including commercial and caravans);
 - iii. Remove from the land all motor vehicles (including commercial and caravans), shipping containers, portable buildings, waste materials, skips, metal ladders, metal frames, pallets, scalping (used to create hardstanding) and all other materials, equipment, machinery, tools and paraphernalia that facilitates the unauthorised uses;
 - iv. Remove from the land the boundary fencing as shown in the approximate position by a broken black line on the plan attached to the Enforcement Notice;
 - v. Remove from the land the associated building (labelled A) as shown in the approximate position on the plan attached to the Enforcement Notice;
 - vi. Remove from the land the scalping (used to create hardstanding) as shown hatched blue in the approximate position on the plan attached to the Enforcement Notice;
 - vii. Remove from the land all fixtures and fittings, waste and building material together with all plant, equipment and machinery associated in compliance with requirements (iii) and (vi) above as appropriate.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the 1990 Act as amended. Appeal B is proceeding on grounds (d), (f) and (g).

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a correction and a variation in the terms set out in the Formal Decision below.

Applications for costs

1. Applications for costs were made by – (1) the estate of Mr Anthony Hall (Appeal A) and Mrs Sheila Hall (Appeal B) against the Council of the London Borough of Hillingdon and (2) the Council of the London Borough of Hillingdon against the estate of Mr Anthony Hall (Appeal A) and Mrs Sheila Hall (Appeal B). These applications are the subject of separate Decisions.

Preliminary Matters

2. The first appellant sadly passed away after the appeal was lodged. Appeal A continues on behalf of the estate.
3. Oral evidence on matters of fact was given under oath or affirmation.
4. At the start of proceedings, I sought some clarification on matters relating to the allegation, as set out in the enforcement notice. The Council considers that the notice is clear. It was explained that the use could be seen as a mixed use with two sui-generis uses that are interlinked in nature. What the Council considers is taking place [on the same planning unit - Brookside yard] is two inter-linked [primary] uses - (1) waste storage, that is, storage of items that have been disposed of, on a commercial scale/for financial gain and vehicles and skips which transport them to/from the site, and also waste stored inside caravans (themselves waste) and – (2) the use of the land for transport also incorporating the parking and stationing of transport vehicles and similar and other items also stationed on the land (shipping containers etc). Then, thirdly, there has been the erection of associated buildings and boundary fencing, scalping used to create hardstanding and some other paraphernalia facilitating the breach. The steps relate to both elements of the mixed use, requiring each to cease and matters facilitating the breach to be removed.
5. The appellant indicated that the use of the land for transport was imprecise and, in particular, the inclusion of caravans as motor vehicles was incorrect since they have no engines. However, I am satisfied that the allegation and requirements are clear. The recipient of the notice would be in no doubt from within the four corners of the document what they are required to do or abstain from doing. I do not propose any corrections to the allegation, therefore. There is some minor duplication in that the removal of scalping is required in steps (iii) and (vi). This can be corrected through the deletion of “scalping (used to create hardstanding)” from step (iii). I consider that I can use my powers of correction under Section 176(1)(a) of the 1990 Act in this limited manner, as it simply removes a minor duplication and there would be no injustice as a result.
6. The land is subject to a previous enforcement notice¹ (the 2000 notice) alleging the change of use of the land to a use for (i) the parking and storage of lorries, repair of vehicles including paint spraying, the storage of waste materials, pallets, skips, wood, metal frames, metal ladders, air conditioning units, tyres, lorry bodies, vehicles and vehicle parts; (ii) the siting of a caravan, portable buildings and 2 mobile cranes; (iii) and the erection of boundary fencing. A subsequent appeal was dismissed and the enforcement notice was upheld². Mr A Hall has stated that the land was eventually cleared in 2005 following successful Court proceedings instigated by the Council for non-compliance with the 2000 notice.

¹ Council Ref EN/00/3 issued 3 February 2000.

² APP/R5510/C/00/1038873 dated 17 August 2000.

7. One of the appellant's witnesses, Mr Thurlbeck, stated in oral evidence that the land was mainly cleared after the previous enforcement action but some items, including a small shed, remained around the edges. It was acknowledged that the photographs appended to Mr N Hall's Proof (NH1), purporting to show the cleared site in 2005, only related to approximately one third of the yard. If Mr Thurlbeck is correct, then the continued presence of material/items that were on site in connection with the use previously enforced against would be in breach of the 2000 notice and cannot be deemed lawful. Mr N Hall insisted that Mr Thurlbeck, a near neighbour, was mistaken and the land had been cleared as required. The Council had no file note on the matter.
8. The only evidence that the site was not wholly cleared was the oral evidence from Mr Thurlbeck. There is no documentary evidence to support this and, in other respects, notably the number of containers on the land, Mr Thurlbeck's evidence was inconsistent with that of other witnesses. Also, the type, location and relevant timescales was wholly unclear from Mr Thurlbeck's remarks, such that I am not in a position to draw any meaningful conclusions on whether or not there was a continued presence on the site of materials/items in connection with the previous use.
9. Towards the end of the third day of the Inquiry, it was indicated during cross-examination of the Council's planning witness that an alternative form of development, such as open storage on a small or restricted part of the site, should be considered. This alternative had not been presented as part of the ground (a) or ground (f) appeals. There was no detail or plans before the Inquiry. As such, I directed the cross-examination to the matters alleged, as the terms of the deemed planning application are derived from the allegation. To consider alternatives at such a late stage in proceedings would, in my judgement, have led to prejudice. The matter was not pursued and I have determined the appeals accordingly.

Appeals A and B on ground (d)

10. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
11. In order to succeed on ground (d), the appellants must show, on the balance of probability, that the matters alleged in the enforcement notice, that is, the whole of the mixed use, have occurred for a continuous period of 10 years or more, prior to the issue of the notice, such that it is too late for the Council to take enforcement action.
12. It has not been argued that the matters alleged have not occurred as a matter of fact. Therefore, what I must decide is when the material change of use to a mixed use comprising waste storage and transport, incorporating the parking of motor vehicles, took place. Although the concept of a material change of use is not defined in statute, the basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of activities from what has gone on previously, as a matter of fact and degree.

13. The first appellant set out the history of the site in a witness statement. Mr A Hall purchased the site in 1977 to provide additional space for his business, which he described as dealing in plant, machinery, vehicles and building materials, and was operating from the nearby Rose Cottage. In 2005, the site at Brookside was said to have been cleared following successful enforcement action by the Council. The appellant claimed the site has been used since that date for the general storage of surplus and/or second-hand or reclaimed building and garden materials or ornaments, timber and electrical equipment. In addition, it was explained that motor vehicles were stored amongst the trees and bushes along with two shipping containers that were purchased in 2008.
14. In 2009, Rose Cottage was subject to a Compulsory Purchase Order and the scrap metal business was moved to Palmers Moor in Iver, Buckinghamshire, where it remained until 2017. After the closure of Palmers Moor, Mr A Hall stated that he needed to substantially clear and re-organise the yard at Brookside to accommodate the materials from Palmers Moor. The shipping containers were moved to the front, near the gates. It is stated that Mr A Hall did not visit Brookside yard very often during the period 2000 to 2017 as he was working elsewhere. The yard was overseen by his sons. One of whom, Mr N Hall, explained in written evidence that he was in charge of running Brookside and he used the site for the storage of unwanted building materials, and other items such as fencing panels stored for a regular customer³. However, he acknowledged that he was not running a business from the site and was present "now and again".
15. Mr N Hall has set out that he too worked from Rose Cottage, where he owned and operated a skip and grab hire business. That business relocated to Palmers Moor in 2009. When Palmers Moor closed, Mr N Hall has stated that materials were transferred to Brookside, which had been used "on and off over the past few years for the storage of materials", although it was said in oral evidence that waste materials were always on site. Mr A Hall and Mr N Hall have both acknowledged that the quantity of materials stored at Brookside increased substantially in 2017, and prior to that, the yard had become overgrown with bushes and small trees.
16. The appellants have maintained that the material change of use took place after the land was cleared in 2005 and has continued since that date without significant interruption. In contrast, the Council argues that the change of use occurred sometime between March and June 2017, coinciding with the closure of Palmers Moor.
17. The documentary evidence in support of the appellants' case is limited. There are no tax records, business account statements or any other verifiable information. Photographs are undated. An invoice provided in respect of shipping containers is simply a word processed document and does not show where or when such structures were sited.
18. Copies of non-domestic rate invoices/payment schedules, dated 2005-2020, have also been submitted with a property description that says "Land Used for Storage"⁴. The Council has explained that the declaration of the use of land is made in the first instance by an occupier or owner. Due a change in the legislation on 1 April 2008, it became usual for property that was previously

³ NH4 Letter concerning storage of fencing panels.

⁴ AH5 Mr A Hall Witness Statement.

described as “industrial” to be declared as “land used for storage”, since this enabled an exemption from business rates if the property was empty. I note from the appellants’ evidence that the exemption applied to Brookside and the property was declared empty until 2017, when the first business rate payments were made.

19. It was further explained that when a property is declared empty, it is monitored frequently in the event that it becomes occupied, in which case the Council has limited time to fulfil its statutory duty to collect business rates. The Council has provided regular monitoring reports from 2005⁵. These consistently describe the site as “void”, “empty” and “overgrown” until 2014 when it was noted that hardcore had been laid to form a track and garden waste was observed on the site. The Council’s records include a file note detailing a conversation with the second appellant in which it was explained that the site remained empty. The records continue to describe the site as “void/empty” until 2017 when it was noted that the site was “now fenced off” and “a couple of vehicles parked inside”. A file note of another conversation with the second appellant confirmed the site was being used for storage, which commenced in May 2017, but it had been empty prior to this.
20. The appellants’ business rates evidence does not lend support to their case that the site was in continuous use for storage, because it was declared empty until 2017. Moreover, the Council has also supplied a series of aerial images, which it is claimed contradicts the appellants’ version of events⁶. Although there was a dispute about the accuracy of the dates, the series of aerial images show that the scale of the use of the site was very different in 2017 to previous years. The images from 2006 to 2012 show a largely green site with trees and shrubbery around the side and rear boundaries. In the 2015 images, vehicle tracks are visible within the site, and there is some material scattered towards the edges. The images from 2017 to 2020 show considerable changes in the scale of use. Shrubby has been cleared and the site is occupied by numerous vehicles, piles of material and skips. Hardcore has been laid. This accords with the acceptance by the first appellant that the quantity of materials stored increased significantly at that time. It also corroborates the Council’s evidence from the business rates inspections, which reported a change in activity at the site in 2017.
21. Nonetheless, Mr N Hall maintained that there was active storage of left over materials, timber/brick, sheets and fencing on the site prior to 2017, but this would not have been apparent to the Council officers who viewed the site from the road, or in aerial images due to the lack of definition of those images. The items said to have been stored on the land were positioned around the edges, ‘hidden’ among the trees or screened with camouflage netting. Several witnesses gave evidence under oath or affirmation in support of the appellants’ case.
22. Mr Stout said in evidence that he used the site to deposit left over building materials between 2006 and 2009. This was generally small amounts, such as a pallet or half pallet of bricks. Mr Stout insisted that the materials were placed among the bushes towards the edge of the site, which is why it does not appear on the aerial images. He agreed, however, that trees were removed and a large quantity of material was brought to the site in 2017.

⁵ Appendix 1 Mitra Davami Proof of Evidence.

⁶ Appendices H Nar Proof of Evidence, and Doc 1.

23. Mr Burton, an electrical engineer, said that he visited the site frequently over the past 15 years and the site was always in active use. Although not visible from the earlier aerial images, it was said in evidence that small scale electrical equipment would have been present, albeit hidden among the shrubbery.
24. Mr Thurlbeck confirmed the presence of a shipping container, which he says had been there for over 10 years, at the back of the site before it was relocated. He said he remembered seeing timbers, bricks, metal plates and slabs on the site. These would not have been visible from the street. Mr Thurlbeck maintained that the site was in regular use but activity fluctuated.
25. Mr Patel stated that, from 2012, he had observed the site being used for storage. He had seen the containers at the top, right of the site, which he thought was before they were moved sometime between 2016 and 2018. Mrs Doyle-Puddifoot said that she has stored various items, such as garden furniture and ornaments and paving slabs, at the site over the years. She also confirmed that the site has become busier over the past three years. Finally, Mr Johnson maintained that he sold the shipping containers to Mr A Hall and supervised their delivery to the site in 2008.
26. The written and oral evidence all points to a relatively low level of activity comprising the small scale storage or deposit of waste or unwanted items at the site between 2005 and 2017. The land was declared to be void or empty prior to 2017, and this was accepted by the Council's trained counter fraud officers, who inspected the site on a regular basis. The fact that any waste materials or works were not visible to the Council strongly indicates small scale use, which had a minimal effect on the character of the site. Moreover, the agreed fact that the site was overgrown supports this. If the site had been in continuous use for the storage of waste and transport, incorporating the parking of motor vehicles, the associated activity would have necessitated clearance or would have prevented the site from becoming overgrown. There would have been obvious vehicle tracks within the site and at the entrance, as can be seen in later aerial images.
27. It may be the case that items, including storage containers, were not visible on the pre-2017 aerial images due to the tree cover. However, any material level of storage would have been apparent. This can be seen from the 2017 images which clearly show the site after "re-organisation", which it is accepted took place after the closure of Palmers Moor. As explained above, the aerial photographs show a significant difference in the character of the site after 2017. Trees and shrubs were cleared, hardstanding was laid and material can be seen across the whole of the site. This is in contrast to how the land appeared previously, largely vacant with tree cover around the edges.
28. I find, therefore, that the increase in the scale of the use, which occurred in or around May 2017, coinciding with the impending closure of Palmers Moor, gave rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in such a change in the definable character of the land such that it amounts to a material change of use to the matters alleged.
29. I will now deal with the boundary fencing. Mr A Hall has stated that he erected temporary fencing around the property after the site was cleared in 2005, which was replaced by stronger fencing in 2008. Mr Stout said in evidence that the fence was reinforced, as and when necessary, but it was the same as that

erected in 2008 “up to a point”. A receipt for metal gates dated 2008 is ambiguous as it does not show where, or if, the gates were installed⁷. This evidence is clearly at odds with the Council’s ‘Google Streetview’ images which show a green metal corrugated fence and gate along the site frontage in July 2016, which was not present in earlier images including an image gated August 2015. Mr N Hall maintained in oral evidence that the fencing in 2005 was ‘Heras’ fencing panels but metal sheeting panels were added over the years from 2008 and at the front in 2015.

30. The appellants’ evidence relating to the fence is incomplete and ambiguous. The 2005 fencing was temporary in nature. It was agreed this has been added to and reinforced over the years. It has not been shown that the fence, as it appears now, has been substantially completed for four years or more.
31. In any event, I must consider whether the fence is operational development in its own right or whether it facilitates the material change of use. The drafting of the allegation, which lists works (including boundary fencing) “and other paraphernalia facilitating the use”, indicates the latter. The reinforcement of the fence, as seen in the 2016 Streetview image, corresponds with the significant increase in activity in 2017 when materials were moved to the site from Palmers Moor. This would have required more secure fencing for security purposes. The fence, therefore, facilitates the unauthorised use. As such, it is subject to the same time limits as the material change of use.
32. For an appellant to demonstrate that a mixed use is immune from enforcement action on the balance of probabilities, they will need to show that the whole of the mixed use has taken place for 10 years. From all that I have seen and heard, I conclude that the material change of use to waste storage and transport, including the parking of motor vehicles, took place in 2017 to accommodate plant and materials that were relocated from Palmers Moor.
33. I conclude on this issue that the appellants have not shown on the balance of probability that the matters alleged in the enforcement notice have occurred for a continuous period of 10 years or more, prior to the issue of the notice, such that it is too late for the Council to take enforcement action.
34. The appeals on ground (d) fail therefore.

Appeal A on ground (a) and the deemed planning application

Background and Main Issues

35. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the material change of use of land for waste storage and transport incorporating the parking of motor vehicles (including commercial and caravans); the stationing of portable buildings, skips and shipping containers; the erection of associated buildings and boundary fencing; scalping (used to create hardstanding); and other paraphernalia facilitating the use.
36. The land is within the Metropolitan Green Belt and the Colne Valley Country Park.

⁷ JS1 of J Stout Proof of Evidence.

37. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the Framework) and relevant development plan policies;
- the effect on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area;
- whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

The Policy Framework

38. On 20 July 2021 the Government published its revised Framework, which represents the up-to-date planning policies for England and how they should be applied. Planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration where relevant to a planning application or appeal, as it is in this case. Policies within the Framework should be taken into account for decision making from the day of its publication. The main parties agreed that the most relevant policies of the revised Framework are those relating to the Green Belt and these are largely unchanged.

39. In addition, the development plan has progressed since the enforcement notice was issued. The notice relies on Policy 7.16 of the London Plan (2016), Policy EM2 of the Hillingdon Local Plan: Part 1 – Strategic Policies (2012), Policy OL1 of the Hillingdon Local Plan: Part 2 – Saved UDP Policies (2012) and DMEI 4 of the Hillingdon Revised Proposed Submission Version of the Local Plan: Part Two – Development Management Policies (2015).

40. The Council clarified that the development plan now comprises The Local Plan: Part 1 – Strategic Policies (2012), The Local Plan: Part 2 – Site Allocations and Designations (2020), The Local Plan: Part 2 – Development Management Policies (2020), the London Plan (2021) and the West London Waste Plan (2015). The relevant policies are Policy EM2, Policy DMEI 4 and Policy G2 of the London Plan.

41. The development plan policies are consistent with the Framework in that they seek to ensure the Green Belt is protected from inappropriate development. Development proposals that would harm the Green Belt should be refused except where very special circumstances exist. The appellant highlights, selectively, a section of supporting text to Policy EM2. This is not policy but, in any event, it simply notes the need to balance growth with the requirement to keep Green Belt land permanently open and free from development.

Whether the development is inappropriate development in the Green Belt and the effect on openness of the Green Belt

42. The Framework 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.

Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

43. As set out above, the matters before me concern a material change of use of land. Paragraph 150 sets out that certain forms of development are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes material changes in the use of land (such as for outdoor sport and recreation, or cemeteries and burial grounds). The Courts have held that openness of the Green Belt has a spatial aspect as well as a visual aspect. The absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension⁸.
44. The unauthorised development comprises the storage of a range of waste materials on the land and the vehicles that transport the material to and from the site, and the parking and stationing of transport vehicles. In addition to other facilitating structures, such as sheds, the site is surrounded by boundary treatment. This includes a relatively high, metal fence with gates, positioned along the site frontage with Moor Lane.
45. The metal fence alone does not preserve openness nor the perception of openness since it encloses an otherwise open area. It is also visually intrusive due to its height, the poor quality construction materials, its haphazard method of construction and, at the front, its proximity to the highway and visual prominence. The materials within the site are not highly visible due to the fencing, trees and vegetation on the site boundaries, the river Colne to the west and the Saxon Way Trading Estate to the north and east. Nonetheless, the storage of waste items on land which was previously open has a negative spatial impact. The transport vehicles may not be permanent but they still affect openness since they would be present frequently on the land. In my judgement, the development does not preserve openness. In addition, the development represents encroachment into the countryside and, as such, it conflicts with the Green Belt purposes. Hence, it would not fall within the exception set out in paragraph 150(e).
46. The appellant sought to argue that the site should be considered 'brownfield' land. Previously developed land is defined in the Framework as "Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure". There is no evidence before me that the land is or was occupied by a permanent structure. The storage containers are temporary structures, they constitute a use of land. They are acknowledged to have been moved within the site and, moreover, the structures are unauthorised. The same principle can be applied to the shed-type structures.
47. In any event, the concept of previously developed land only has relevance where new buildings are being considered, not a change of use as in this case. Paragraph 149 of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate development, exceptions include, at 149(g), limited infilling or the partial or complete

⁸ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466; *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3.

redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings). As explained, the buildings on the site are temporary, unauthorised and they facilitate the change of use. Even if I were to accept this argument, the development would have a greater impact on openness than the existing development, that being the land as it existed before the unauthorised development took place, for the reasons set out above.

48. I conclude that the development is inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and this harm carries substantial weight.

Character and Appearance

49. The site lies between the River Colne and the Saxon Way Trading Estate, within the Colne Valley Regional Park. Despite the relative proximity of the junction between the M4 and M25 motorways, and Heathrow airport, I found the character of the area to be semi-rural. The dominant features are the trees and greenery of the Country Park, the hedgerows alongside the local roads and the open areas, which make a positive contribution to the area's appearance. I acknowledge that there is development immediately to the south-east, which includes light industrial, but this blends into the area's semi-rural character as opposed to being an urban feature. I do not agree with the appellant's assessment that described the area as predominately industrial/commercial. The fact that it is not a designated Area of Outstanding Natural Beauty is irrelevant.
50. I also observed a number of HGVs arriving at, or leaving, the Trading Estate. However, the locality was not dominated by commercial traffic, as has been described. In addition, there were several people using the paths alongside the river for recreational purposes. I was aware of noise from motorway traffic, and aircraft noise, during my site visit. However, the more apparent experience was one of tranquillity, resulting from a combination of natural features in the vicinity as opposed to noise and air pollution.
51. It was asserted that the site provides no contribution to the visual amenity of the area, or its character and appearance. This is true of the site in its current state, however, prior to the unauthorised development, on the appellants' own evidence, the land was cleared. It would have been a green space with more trees and shrubs than exist now, which would have made a positive contribution in keeping with its semi-rural setting. The use has led to a reduction in natural landscaping and has introduced an unsightly form of development, which is incongruous with the locality. I conclude, therefore, that the development has had an adverse effect on the character and appearance of the area. The harm is relatively localised and, hence, I consider it to be modest.

Other considerations

52. It was argued that the appeal site has been occupied for some time and should not be considered a new development. This approach is incorrect. The development is unauthorised and it must be considered against the development plan policies, taking account of other material considerations.

53. Whether or not the land should have been included within the development boundary, rather than being within the Green Belt, is not relevant. The designation exists and forms the basis for the assessment against planning policy. As explained, I do not find that the site is remote and inaccessible brownfield land, nor was it dominated by noise and air pollution. As such, these assertions carry limited weight.
54. The appellant argued that the site was not run commercially. There was no evidence of it being used regularly by local builders or tradespeople. The argument that the use has led to economic benefits is weak, given that there are no records of employees or any other documentation indicating a need for the development. There may not be any adverse highways impacts resulting from the development, or any significant local objection, but lack of harm is neutral and does not weigh in favour of the development. Similarly, the support for the scheme from local people is not a reason in itself to depart from established planning policy.
55. It was asserted that the development represents infilling of an otherwise rectangular layout of the, much larger, Trading Estate. However, in contrast, the site could equally be said to comprise part of the landscaping to the Trading Estate, which would have a positive visual impact. Rather than being marooned within an area of commercial/industrial development, the site has extended into the countryside and simply represents encroachment.
56. The appellant has argued that the site will eventually be removed from the Green Belt due to what is described as the probable construction of a third runway at Heathrow Airport. This outcome is by no means certain and, crucially, any review of the Green Belt boundaries would need to be carried out through a Local Plan review. The development of Green Belt on a purely speculative basis would be contrary to national and local policy. This consideration carries little weight.
57. Finally, the site is not under-utilised. It is within the designated Green Belt and, in its state prior to the unauthorised development, would have made a contribution to Green Belt purposes, most notably through safeguarding the countryside from encroachment. In my judgement, the totality of the other considerations advanced carry minimal weight.
58. As explained above, it was suggested at a late stage in proceedings that an alternative form of development, such as open storage on a small or restricted part of the site, should be considered. No details were before the Inquiry. Nonetheless, it is probable that a smaller scale use of the land for open storage would amount to inappropriate development in the Green Belt since it would not fall within the exceptions of the Framework.
59. I am invited to consider granting retrospective planning permission for boundary fencing, having regard to the fallback position resulting from permitted development rights, although there are no details. As explained, the fencing along the site frontage has an adverse impact on openness and visual amenity due to its materials and method of construction. A lower fence of the same materials would not overcome the harm identified. I am not able to consider a split decision in relation to the side and rear as I am not satisfied that I could vary the notice with sufficient precision.

Conclusion

60. I conclude that the development is inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be moderate harm to the character and appearance of the area. The other considerations advanced by the appellant carry minimal weight and do not clearly outweigh the totality of the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The development is unacceptable in principle and the harm could not be mitigated through the imposition of planning conditions, therefore.
61. The development would be harmful to the Green Belt, contrary to Policy EM2 of the Local Plan: Part 1 (2012), Policy DMEI 4 of the Local Plan: Part 2 DMP (2020) and Policy G2 of the London Plan (2021) which seek to protect the Green Belt from inappropriate development. As a result, the development would not accord with the development plan taken as a whole.

Appeals A and B on ground (f)

62. Section 173(4) of the 1990 Act sets out the two purposes of an enforcement notice – (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury caused by the breach. The steps set out in the notice require the unauthorised uses to cease and the removal of matters that facilitate those uses. Its purpose is to remedy the breach of planning control. What must be considered under the ground (f) appeal is whether the steps required exceed what is necessary to achieve that purpose.
63. The appellant argues that the fence would be permitted development if it were to be reduced in height. The Council has conceded that it would accept a variation to the height of the fence to within the limits of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) Schedule 2, Part 2, Class A, which concerns the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, the Council also noted that the fence facilitates the unlawful use.
64. It is established that an enforcement notice directed at a material change of use may require the removal of works integral to, and solely for, the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement, so that the land is restored to its condition before the change of use took place⁹. In this case, the allegation sets out the breach as a change of use to a mixed use and lists the matters that were considered to facilitate the breach. The fence is included in this list along with portable buildings, skips, shipping containers etc. The enforcement notice also states that the breach has occurred within the last 10 years, which corresponds with the breach being a change of use.
65. In addition, it is clear from the evidence provided pursuant to the ground (d) appeals that the fence was required in connection with the unauthorised use. It secured the site and its contents in a way that would not have been necessary had the land remained clear, or at the low level of use which preceded the

⁹ *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.

material change of use. The explanation that the fence was erected in 2008 for security and to prevent occupation by members of the Gypsy and Traveller community lacked credibility, given the temporary nature of the reinforced 'Heras' type fencing described.

66. As such, I conclude that the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. The unauthorised use must cease and facilitating development must be removed. This is proportionate and necessary to prevent the use reoccurring.

67. The appeals on ground (f) fail, therefore.

Appeals A and B on ground (g)

68. The ground (g) appeals are that the compliance period falls short of what should reasonably be allowed. It is argued that caution should be exercised due to the Covid-19 pandemic. In addition, it was pointed out that compliance with the notice is now the responsibility of the second appellant and it may take longer than the three months allowed to comply with its requirements.

69. The Council maintained that three months is more than sufficient to clear the site and remove the hardstanding. However, I consider it likely that contractors would need to be engaged to remove the waste material and the other works. Although the amounts of material have reduced, it would still take time to secure contractors and make the necessary arrangements. The effect of the pandemic is that these matters may well take longer than previously due to increased demand and staff shortages.

70. I will vary the notice to allow an extended time period of six months for compliance. The ground (g) appeals succeed to this limited extent.

Conclusion

71. For the reasons given above, I conclude that the appeals should succeed only in relation to the ground (g) appeals. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

72. It is directed that the enforcement notice is corrected by the deletion of the words "scalping (used to create hardstanding)" in requirement (iii); and varied by the deletion of 3 months and the substitution of 6 months as the period for compliance.

73. Subject to the correction and variation, the Appeals A and B are dismissed, 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.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Philip Galway-Cooper of Counsel instructed by Mr Ben Hall of Baron Grey Solicitors

He called:

Mr Nicholas Hall (Witness of Fact)
Mr Jonathan Stout (Witness of Fact)
Mr Christopher Burton (Witness of Fact)
Mr Tony Johnson (Witness of Fact)
Mr John Thurlbeck (Witness of Fact)
Mr Ajay Patel (Witness of Fact)
Mrs Linda Doyle-Puddifoot (Witness of Fact)
Mr Nigel Husband (Planning Expert)

FOR THE LOCAL PLANNING AUTHORITY

Ms Sasha Blackmore of Counsel instructed by the Council of the London Borough of Hillingdon

She called:

Mr Harry Nar (Enforcement Officer)
Ms Mitra Davami (Counter Fraud Officer)
Mr Prag Shah (Policy Officer)

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Brookside Images 'Google Earth Pro' – 12/2006, 9/2008, 10/2008, 6/2010, 2/2011, 3/2012, 7/2013, 9/2014, 6/2015, 10/2015, 4/2017, 5/2018, 6/2019, 4/2020
2. Brookside Images 'Google Earth' 12/2003
3. Brookside Images 'Google Earth' 12/2003, 9/1999
4. AH4 resubmitted
5. OS digital overlay to 'Google Earth' image 2015 and 12/2006, 9/2008, 6/2010, 7/2013 and 6/2015
6. List of suggested conditions
7. NPPF comparison document