



Appeal Decisions

Site visit made on 20 September 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 27 September 2021

Appeal A Ref: APP/H1840/C/21/3266920

Appeal B Ref: APP/H1840/C/21/3266921

Land known as Unit 5, Shaw Lane Industrial Estate, 152 Shaw Lane, Stoke Prior, Bromsgrove B60 4ED

- 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 Pritesh Sonpal (Appeal A) and Miss Dawn Chance (Appeal B) against an enforcement notice issued by Wychavon District Council.
- The enforcement notice was issued on 10 December 2020.
- The breaches of planning control alleged in the notice are: The unauthorised material change of use of a building from agricultural use to a mixed use of agricultural and leisure/domestic; and Failure to comply with condition No 4 of a planning permission Ref W/16/01092/PN granted on 21 June 2016.
- The development to which the permission relates is a replacement agricultural building. The condition in question is No 4 which states that: 'The replacement agricultural building hereby permitted shall be used solely for the storage of agricultural equipment and produce and shall not be used for any commercial or business purposes or converted into habitable accommodation'. The notice alleges that the condition has not been complied with in that there has been an unauthorised material change of use of a building from agricultural use to a mixed use of agricultural and leisure/domestic.
- The requirements of the notice are: 5.1 To permanently cease the leisure/domestic use of the agricultural building approximately hatched green on the attached plan; 5.2 To permanently remove all domestic items, including but not limited to: a sofa, chair, games unit, television and pool table which are not agricultural equipment, produce, or serve an agricultural purpose, from the agricultural building approximately hatched green on the attached plan.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.
- Appeal B is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Procedural Matter

1. The National Planning Policy Framework (the Framework) was revised during the course of the appeal. I gave the parties an opportunity to comment but no comments were made.

The Notice

2. The Enforcement Notice is headed 'Enforcement Notice – Breach of Condition' and paragraph 1 of the Enforcement Notice states that it appears to the Council that there has been a breach of planning control under Section 171A(1)(b)¹ – which relates to a breach of condition.
3. However, paragraph 3 of the Notice refers to two breaches of planning control, specifying an 'unauthorised material change of use', along with a breach of Condition 4 of the 2016 Permission². It is therefore clear to me that the Notice attacks both the breach of condition and material change of use as alleged.
4. Accordingly, I shall correct the heading of the Notice to refer to both a material change of use and breach of condition. I shall also correct paragraph 1 of the Notice to refer to Sections 171A(1)(a) and (b) of the 1990 Act. I do not consider that any injustice would result to either party from this since it is plain from the content of the notice that it relates to both a material change of use and a breach of condition.

The Appeal on ground (a) and the deemed planning applications (Appeal A only)

5. This ground is whether, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
6. Thus in this case, there are two deemed planning applications being (a) for a material change of use of the building to a mixed use of leisure/domestic and agriculture; and (b) for the development as approved by the 2016 Permission without compliance with Condition 4 of that permission.

Deemed planning application – (a) material change of use

Main Issues

7. The main issues in respect of the deemed planning application for a material change of use from agricultural to a mixed use of agricultural and leisure/domestic use (the MCU) are: (i) whether the MCU would amount to inappropriate development within the Green Belt; and (ii) if so, whether the harm caused by that inappropriateness, and any other harm, is outweighed by other considerations such that very special circumstances exist to justify the MCU.

Background

8. The appeal site is located within the Green Belt and is adjacent to an industrial estate with open fields opposite. Planning permission was granted pursuant to the 2016 Permission for a replacement agricultural building. Condition 4 of the 2016 Permission, as outlined above, restricted the use of the building to solely for the storage of agricultural equipment and produce.
9. The site is a small agricultural holding which contains essentially the appeal building, a small shelter, dilapidated touring caravan, a small vegetable patch,

¹ of the Town and Country Planning Act 1990 as amended (1990 Act)

² Ref: W/16/01092/PN (non-material amendment ref: 18/00309/NMA)

a small number of poultry and an area of open field. The appeal building is fitted out internally with a kitchen and bathroom. Some two thirds of the building is given over to domestic/leisure type paraphernalia, with a storage area containing a mixture of items associated with land maintenance/agriculture, along with some domestic paraphernalia.

Whether inappropriate development

10. The Framework identifies that inappropriate development is, by definition, harmful to the Green Belt and should not be approved, except in very special circumstances.
11. Paragraph 150 of the Framework sets out forms of development that are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. This includes the re-use of buildings provided that the buildings are of permanent and substantial construction. Policy SWDP 2E of the South Worcestershire Development Plan (2016) (SWDP) states that development proposed within the Green Belt will be considered in accordance with national policy as set out in the Framework.
12. The MCU as described represents a re-use of the appeal building. There is nothing to suggest that the building is not of permanent and substantial construction. Thus, whether or not the MCU represents inappropriate development turns upon whether it preserves openness and whether it conflicts with the purposes of including land within the Green Belt.
13. Openness is the absence of buildings or development. Plainly, the MCU does not result in any new built development. However, in my view, the domestic use of the building and associated comings and goings and domestic paraphernalia result in a loss of openness in the sense of there being a greater sense of urban sprawl on what is permitted only as agricultural land.
14. The five purposes of the Green Belt are set out in paragraph 138 of the Framework and include assisting in 'safeguarding the countryside from encroachment'. Introducing a domestic/leisure use onto agricultural land severely diminishes the rural qualities of the site and thus represents encroachment into the countryside.
15. I find then that the MCU does not preserve the openness of the Green Belt and conflicts with a purpose of including land within the countryside – namely safeguarding the countryside from encroachment. It is therefore inappropriate development in the Green Belt.

Other considerations

16. The appellant has put forward little substantive argument weighing in favour of allowing the development. I acknowledge though submissions related to the appellant's need during the COVID-19 pandemic to work in an isolated environment, the convenience of storage of domestic items close to the appellant's home and the enjoyment derived from the leisure use. I note also that a previous occupier of the site apparently lived in a static caravan on site without issues for a number of months, and that the site is adjacent to an industrial estate. I have considered that the Council was apparently aware of a kitchen being fitted in the building and that the building is not being used for habitable accommodation.

Whether or not very special circumstances exist

17. The material change of use represents inappropriate development within the Green Belt, causing harm to openness and resulting in encroachment into the countryside. The Framework requires that I attach substantial weight to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
18. I cannot attribute any material weight to considerations related to the personal convenience and enjoyment of the appellant related to working and relaxing in the appeal building since these arguments could be repeated too often, entirely undermining the purposes of Green Belt policy. Although the site is next to an industrial estate with the address as 'Unit 5' of the industrial estate, this does not alter the fact that the site itself is agricultural land and represents countryside which should be protected from encroachment. The fact that a former occupant lived on the site without issue does not overcome the fundamental conflict with Green Belt policy. The internal fit out of the building with a kitchen and the fact that it is not used as habitable accommodation does not alter the fact that the leisure/domestic use conflicts with a Green Belt purpose as outlined.
19. It follows that no material considerations have been presented that clearly outweigh the harm identified and the very special circumstances needed to justify a grant of planning permission do not exist. The material change of use thus conflicts with Policy SWDP 2E of the SWDP and with section 13 of the Framework, which seek to protect Green Belt land. There is conflict then with the development plan, read as a whole.

Deemed planning application – (b) development as approved without compliance with Condition 4 of 2016 Permission

Main Issue

20. Guidance on planning conditions is contained within paragraph 56 of the Framework. This states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. The main issue then is whether Condition 4 is reasonable and necessary in the interests of protecting Green Belt land.
21. I have found above that the material change of use from agriculture to a mixed use of agriculture and leisure/domestic is not acceptable in view of the harm in relation to Green Belt land. Condition 4 has been imposed to restrict the use of the building to solely agricultural storage and, in the context of the Green Belt harm resulting from a material change of use to the mixed use cited, Condition 4 is reasonable and necessary on that basis alone.
22. Further, the 2016 Permission describes the development permitted as a 'replacement agricultural building'. As such, to remove Condition 4 or to vary this so as to enable some beyond de minimis level non-agricultural use would result in a conflict with the description of development since it would fundamentally alter the original planning proposal for which permission had been granted.

23. Thus I conclude that Condition 4 is reasonable and necessary in the interests of protecting Green Belt land. Removing the condition would result in conflict with Policy SWDP 2E of the SWDP and with section 13 of the Framework.
24. Accordingly, the appeal on ground (a) fails and I shall refuse to grant planning permission on the deemed planning applications as outlined above

The Appeal on ground (f) (Appeals A and B)

25. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or any injury to amenity which has been caused by the breach.
26. There are two breaches of planning control identified on the notice, being a material change of use and a breach of condition. The requirements are the same in respect of both breaches – essentially to cease the unauthorised leisure/domestic element of the mixed use and to remove any related paraphernalia associated with that unauthorised use. The effect of these requirements is then to remedy the breaches of planning control as stated. As such, the purpose of the notice is to remedy the breach, rather than any consequent injury to amenity.
27. For the appeals on ground (f) to succeed, the appellants would need to propose alternative steps which would remedy the breaches. The appellants' commitment to not using the building as habitable accommodation would not overcome the breach of planning control related to the use of the building for domestic/leisure use. There are then no lesser steps identified that would overcome the breaches of planning control.
28. I conclude thus that the requirements of the notice are not excessive but necessary to remedy the breaches of planning control that have occurred. The appeals on ground (f) fail.

Conclusion

29. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and (in respect of Appeal A) refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended

Formal Decision

30. It is directed that the enforcement notice is corrected by:
- In the heading to the Notice, after the wording "ENFORCEMENT NOTICE –" add the wording "MATERIAL CHANGE OF USE AND"; and
 - In paragraph 1 to the Notice, delete the wording "Section 171A(1)(b)" and substitute "Sections 171A(1)(a) and (b)".
31. Subject to the corrections, the appeals are dismissed, the enforcement notice is upheld and in respect of Appeal A planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond

INSPECTOR