



Appeal Decisions

Site visit made on 11 October 2021

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal A Ref: APP/T0355/C/21/3278222

Land east of the Hollies, Moneyrow Green, Holyport, Maidenhead

- 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 Paul Kelly against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
- The enforcement notice was issued on 3 June 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a building.
- The requirements of the notice are:
 - a) Dismantle the building approx. shown on the plan with a blue outline and identified in the appended image;
 - b) Remove all materials from the land following compliance with step (a).
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) 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 appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/T0355/C/21/3278279

Land east of the Hollies, Moneyrow Green, Holyport, Maidenhead

- 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 Paul Kelly against an enforcement notice issued by Council of the Royal Borough of Windsor and Maidenhead.
- The enforcement notice was issued on 3 June 2021.
- The breaches of planning control as alleged in the notice are:
 - a) without planning permission, the formation of hard surfacing on an existing track as indicated on the plan hatched in green;
 - b) without planning permission, the stripping of soil and the formation of earth bunds.
- The requirements of the notice are:
 - a) Dig up the hard surface identified by the green hatching (approx.) on the appended plan and remove all materials from the land;
 - b) Following compliance with step 1, fill in any voids in the land with soil and regrade the surface of those areas to reflect the contours of the adjoining land;
 - c) Remove the earth bunds from the approx. locations identified on the plan in blue hatching and spread over the area hatched in purple and regrade the land to reflect the levels of the adjoining land.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (a), (f) 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 as amended.

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

Enforcement Notices

1. An enforcement notice should be drafted so that it tells the recipient fairly what they have done wrong and what they must do to remedy it. The appellant questions the validity of both the enforcement notices.
2. Both notices are accompanied by a plan which outlines the site and identifies using a colour key the appeal building, the hard surfacing, the earth bunds and the area of land over which these earth bunds should be spread.
3. In each notice the Council clearly sets out the matters which constitute the breach of planning control, reasons for issuing the notice and the steps required to comply with them. These matters are discussed further in the relevant grounds of appeal below.
4. The notices are sufficiently clear and precise, and the recipients of the notice appear to have understood what is being attacked and where it is.

Preliminary Matters

Appeal A

5. Since there is no ground (a) appeal, and hence no deemed planning application, I cannot consider matters of planning merit relating to the appearance of the alleged building and its effect on the Green Belt.

Appeal B

6. Whilst not raised as a ground of appeal, the appellant has nonetheless, made submissions that the formation of hard surfacing on the existing track is de-minimus, does not amount to development and does not constitute a breach of planning control. This argument falls within ground (c)¹ and I will deal with it as though raised by that ground. Both parties have been given the opportunity to comment, therefore there would be no injustice or prejudice to either party by this course of action.
7. In the period since the appeal was submitted, the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties were given the opportunity to comment on any implications for the appeal of this change, and I am therefore satisfied that no prejudice would be caused by my consideration of the ground (a) appeal against the revised Framework.

Appeal A on grounds (b) and (c)

8. The appeal on ground (b) is that the matter alleged has not occurred as a matter of fact. The appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In legal grounds such as under s174(2)(b) and (c) of the 1990 Act the burden to make out the case rests with the appellant.

¹ (c) that those matters (if they occurred) do not constitute a breach of planning control.

9. I shall deal with these two grounds together, as has the appellant, because the outcome of the ground (c) appeal is to an extent contingent on the outcome of the ground (b) appeal.
10. Section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under the land. Section 336 of the Act defines "Building" to include "any structure or erection". The notice alleges the "erection of a building". The appellant contends that the stables are a temporary portable structure, which can be easily dismantled and which has no physical attachment to the ground. I therefore need to examine whether the stables are a building operation/building.
11. Both parties refer to well established case law which identifies the three primary tests for whether or not a structure is a building - size, permanence and physical attachment and no one of these is decisive.
12. The structure is 6m x 6m with a ridge height of approximately 3.5m; it comprises 4 stables (each 3m x 3m). The suggestion that size should be assessed by taking account of each individual stable is incorrect because these stables have been positioned together underneath one roof such that they form one overall structure. Moreover, the stables were brought on to the site in a flat pack form² and constructed on site as a building operation. The stables form a structure of some substantial size. I find that its size has the attributes of a building.
13. The structure is constructed using lightweight galvanised frames with plastic panelling and a tarpaulin roof. Although I am informed, it can be assembled/dismantled in an hour and no tools or machinery are required, the photographic evidence³ shows a number of people preparing the sections for transport. The Council's photographic evidence⁴ shows at least two people erecting the structure on site.
14. The structure has been moved twice since being erected in May 2021, once in July when it was towed by a tractor a metre sideways and again in August when it was pushed by 3 men approximately 4 metres. The appellant describes his intention to divide the field into paddocks and move the structure from paddock to paddock. Whilst it is the appellant's intention to move the structure around the field according to the grazing management of the grassland, no details have been provided as to how often the structure is likely to be moved. Moreover, it is evident from the photographic evidence that the structure has remained in the same place long enough for vegetation to grow around it. The structure is of a construction that it seems to me that, although capable of being repositioned, this is not readily achievable without considerable effort. I therefore consider that the structure has a substantial degree of permanence.
15. In terms of the degree of attachment to the land, despite having no floor and according to the appellant, needing no preparatory groundwork, there is considerable degree of attachment by virtue of its own weight and stakes "banged" into the ground at the corners, sufficient to constitute a building operation.

² Appendices 1 & 4 of the Appellant's statement.

³ Appendix 3 of the Appellant's statement.

⁴ Pages 9 & 10 of the Council's statement

16. The appellant has referred to documentation⁵ from the company providing the stabling and the comments regarding the requirement for planning permission. That this form of equestrian stabling may be used for equestrian shows across the country as well as by small businesses. I also take account of the fact that the stables are on hire and can be returned to the company at any time⁶. However, these matters do not prevent the structure from being a building.
17. The appellant's reference to the case of '*Wealden*' is not directly relevant to this particular case because unlike the appeal before me, it concerned whether the stationing and use of a caravan constituted a material change of use of the land.
18. I have had regard to the appeal decision⁷ relating to amongst other things a 'mobile field shelter'. However, unlike the appeal structure, the 'mobile field shelter' was constructed on skids with hooks to enable it to be relocated, small in scale and likely manufactured off site and brought onto the land mostly in its complete state. Thus, the 'mobile field structure' is a different development which was assessed on the facts specific to the case and is not directly comparable with the appeal structure before me. For these reasons I give the other appeal decision little weight.
19. For the above reasons, as a matter of fact and degree, the structure is of a sufficient size, degree of permanence and physical attachment to the ground to be a building within the meaning of s336 of the 1990 Act.
20. Based on the evidence, I agree with the Council, that there appears to be a sufficient degree of permanence to be of consequence in planning terms. Therefore, the building is development as defined by s55(1) of the 1990 Act. Planning permission is required for development by virtue of s57(1) of the 1990 Act. No such permission has been granted and it is no part of the appellant's case that it is deemed to be granted under the Town and Country Planning (General Permitted Development) (England) Order 2015.
21. Accordingly, the matters alleged in the notice have occurred and those matters constitute a breach of planning control. The appeal on grounds (b) and (c) therefore fail.

Appeal B on ground (b)

22. The appellant's case is that there has been no formation of a hard surface, it was pre-existing and comprised of brick rubble, ballast and road planings. The appellant states that he scraped the surface, laid a thin layer of road chippings and filled up ruts that had been created by previous use.
23. The google street images taken in March 2010 and July 2019 show a grassy well-trodden track which forms a section of the Bray 30 Public Right of Way (PROW). Having regard to the appellant's undated photograph and residents' submissions, whilst the pre-existing track comprised mainly soil and vegetation, it was originally constructed using some kind of hard-core material/brick rubble topped with grass.

⁵ Appendices 1 and 4 of the Appellant's statement.

⁶ Statutory declaration from Mr Kelly.

⁷ APP/Y9507/C/13/2198969 relating to 1) the material change of use of land from agriculture to the stabling, keeping and exercise of horses and for other equestrian purposes including the provisions of field shelters; and 2) the carrying out of operational development comprising the erection of three buildings for stabling horses on the land.

24. With reference to photographic evidence, the Council contend that the land has been scraped back to a depth of between 100mm-200mm and then imported road planings have been laid over a large area in the approximate location as shown hatched in green on the plan accompanying the enforcement notice. Thus, taking all the evidence into account, works have undoubtedly been carried out to form hard surfacing on top of the existing track. The matters alleged have therefore occurred as a matter of fact, and the appeal on ground (b) fails.

Appeal B on ground (c)

25. Section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under the land.
26. The Council's evidence, which includes photographs taken at site visits by Council Officers, shows that the land was scraped back by using a mechanical digger and dumper truck.
27. From all I have seen and read, it is clear that the extent of the works, including the deposition of imported material and the depth to which it has been laid, in my view, go beyond what could be considered as the maintenance or repair of an existing track as claimed by the appellant. The works have resulted in a significant physical alteration of the land and amount to an engineering operation.
28. I consider that the scale of the engineering operations that have taken place amount to development within the meaning of s55 for which planning permission is required. No planning permission has been given and there has been a breach of planning control as alleged. Thus, had an appeal been brought on ground (c), it would have failed accordingly.

Appeal B on ground (a)

Main issues

29. The main issues are:

- i) Whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies, including an assessment of the effect on the openness of the Green Belt;
- ii) The effect of the development on the character and appearance of the area; and
- iii) If the development is inappropriate, 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.

Inappropriate development?

30. The formation of hard surfacing on an existing track, the stripping of soil and the formation of earth bunds are engineering operations. Paragraph 150 of the Framework establishes that certain other forms of development are not inappropriate in the Green Belt. One such form is engineering operations as

long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

31. The Framework advises at paragraph 137 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. Paragraph 138 advises that the Green Belt serves five purposes including to assist in safeguarding the countryside from encroachment.
32. The pre-existing track had a simple natural appearance largely comprising of soil and grass with an element of hardcore underneath. Albeit the works that have been carried out are at ground level, they have resulted in a track which appears wider and of a uniform level along its entire length. The deposition of imported material and the scale of the hard surfacing has resulted in a visually intrusive development which has an urbanising effect on the appearance of the land. Thus, the works have a greater impact on the openness of the Green Belt than the pre-existing track.
33. Whether or not the notice has been satisfactorily complied with in relation to the earth bund is a matter for the Council. It is evident from all I have seen and read that at the time the notice was served, the stripping of soil and the formation of earth bunds had taken place on the land in the location as indicated on the plan which accompanied the enforcement notice. The evidence shows that the formation of earth bunds in this open field introduces substantial solid features into the landscape. Their physical presence, which is unnatural and visually intrusive, reduces the spatial aspect of openness.
34. I therefore find that the formation of the hard surfacing, the stripping of soil and the formation of bunds has an adverse impact on openness. Moreover, the development has a greater impact on openness than what existed previously. Consequently, the development fails to preserve the openness of the Green Belt.
35. Whilst the Framework states that engineering operations may be an exception to strict control of development in the Green Belt, openness should be preserved. As the development does not preserve openness it is inappropriate development which by definition is harmful. Taken into account that openness is an essential characteristic of Green Belts, the harm that is caused carries significant weight.
36. Thus, the development is contrary to Policies GB1 and GB2 of the Royal Borough of Windsor and Maidenhead Local Plan (LP) which state that approval will only be given, save in very special circumstances, for engineering and other operations which maintain openness and do not conflict with the purposes of including land in the Green Belt.

Character and appearance

37. The appeal site is an area of land at the rear of residential properties east of Moneyrow Green which is accessed via the PROW off Moneyrow Green. The PROW runs along the northern boundary of the appeal site.
38. Notwithstanding the fencing along neighbouring boundaries the development is visible from Moneyrow Green and a number of locations in the surrounding area.

39. The extent of the hard surfacing, the earthworks and the formation of bunds are intrusive features in an otherwise relatively undeveloped area. They appear incongruous and have a harmful urbanising effect on the rural character and appearance of the area.
40. The appellant contends that there is little difference between the appearance of the pre-existing track and the present track which he considers will eventually have vegetation growing through it. Given the amount of imported material that has been deposited along the length of the track, I consider that it would take some considerable time for vegetation to grow sufficient to overcome the visual impact of the present track, if at all.
41. Thus, I consider that the development results in significant harm to the character and appearance of the area. It is contrary to Policy DG1 of the LP which states that harm should not be caused to the character of the surrounding area through development which results in the loss of important features which contribute to that character.
42. The Council refer to a number of policies in its emerging LP. Given that the emerging plan is still to be adopted only limited weight can be given to its provisions.

Other matters

43. In its reasons for issuing the notice the Council consider that the formation of the hard surface and the associated earth works may impact on protected species including bats, badgers, reptiles, amphibians, hedgehogs, nesting birds and important trees within the site. However, based on the limited information before me, this matter does not add weight to my reasons for dismissing the appeal.

Other considerations

44. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm arising is clearly outweighed by other considerations.
45. The appellant's evidence⁸ includes email communication with the Public Rights of Way Officer (PROW Officer). The plan provided by the PROW Officer shows locations where kissing gates and fences need to be altered to allow for easier access to those that find it difficult to negotiate the footpaths, this includes the gateway at the access to the appeal site. This evidence does not indicate Officer support to extend the footpath using similar materials as contended by the appellant. I therefore give this matter minimal weight.
46. The appellant says that the porous material will avoid flooding of both the track and public footpath. Whilst the evidence indicates that there had been some deterioration of the pre-existing track over time resulting in potholes and puddles, I have been provided with no substantial evidence to show that the development was necessary to avoid flooding. Moreover, a landowner who has a right of way over the track indicates that whilst in winter access could be difficult for large vehicles, this could have been remedied by laying scalplings in the sunken areas. Also, there is no evidence to suggest that the pre-existing

⁸ Appendix 1 of the Appellant's statement.

track prevented access/egress to emergency vehicles to the neighbour's smallholding. I therefore afford these matters little weight.

47. Although I am informed that the PROW Officer has requested "an extension to what exists to ensure a larger flooded area beyond the track is extinguished", I have been provided with no evidence regarding this flooding. Moreover, the appellant acknowledges that he was advised such works would require planning permission. I therefore give this matter little weight.
48. Mr Barton's affidavit⁹ says that he has used the track for the past six years and I accept that using the track without ruts or puddles is beneficial to vehicles. I give this matter some weight
49. Comments that the track will ensure no structural development on the land and that the land will continue to be put to equestrian use in accordance with the planning permission¹⁰ and will continue to provide a rear entrance to the neighbouring property are afforded limited weight.

The Green Belt balance

50. I have concluded that the development is inappropriate development that conflicts with national and local policy to protect the Green Belt. It is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Moreover, I have found harm is caused to the character and appearance of the area.
51. I find that other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

52. For the above reasons, I conclude that the development conflicts with the development plan as a whole and that planning permission should be refused.
53. The appeal on ground (a) fails.

Appeal B on ground (f)

54. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary. Since the notice requires the hard surface to be dug up and the materials removed, the filling of any voids in the land with soil and the regrading of the surface of those areas and the removal, spreading of the earth bunds and regrading of the land, the purpose of the notice is clearly to remedy the breach. No lesser steps than those required would achieve that purpose and the requirements of the notice, cannot, therefore be said to be excessive.
55. I acknowledge that carrying out the required steps would generate noise and disturbance to the neighbours and a degree of inconvenience to road and footpath users. However, unlike the identified harm, the noise, disturbance and inconvenience would not be permanent.

⁹ Appendix 2 of the appellant's statement.

¹⁰ Appendix 5 of the appellant's statement.

56. The appellant says that it would be pointless to fill any voids with soil as after moderate rainfall these areas would turn to mud. However, there is no scheme before me demonstrating an alternative to the steps specified in the notice which would overcome the harm. The appeal on ground (f) therefore fails.
57. The appellant has the option of approaching the Council to see whether any suitable alternative to the requirements of the notice would be acceptable since the Council has discretion under s173A(1)(b) of the Act to waive or relax any requirement of the notice.

Appeal B on ground (g)

58. The appeal on ground (g) is that the time given to comply with the requirements is too short. The appellant seeks 3 months in order to find and instruct contractors and to carry out the works.
59. Having regard to the submissions from both parties, given the location of the site and the vagaries of the weather, the removal of the hard surface and regrading of the land could take longer than anticipated by the notice. I therefore consider the period for compliance with the notice should be increased to 3 months and the appeal on ground (g) should succeed.

Formal Decisions

Appeal A – APP/T0355/C/21/3278222

60. The appeal is dismissed and the enforcement notice is upheld.

Appeal B - APP/T0355/C/21/3278279

61. It is directed that the enforcement notice be varied by the deletion in the section headed 'Time for Compliance' of the words "28 days", and the substitution therefore of the words "3 months" as the time given to comply with the requirements of the notice.
62. Subject to this variation, I dismiss the appeal and uphold the enforcement notice.

Elizabeth Jones

INSPECTOR