



Appeal Decision

Site visit made on 28 February 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2022

Appeal Ref: APP/G2245/C/20/3256567

Maplebank Poultry Farm, Maplescombe Lane, Farningham DA4 0JY

- 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 Howard William Prosser against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice was issued on 26 June 2020.
 - The breach of planning control as alleged in the notice is: Change of use of the Land and associated buildings from agriculture to storage for building supplies (PPE, site tools, site equipment, plant hire and others), office supplies, trailers and containers and creation of office spaces and asbestos removal spaces including B1 and B8 uses.
 - The requirements of the notice are: Cease use of the land and associated buildings for the uses described in the breach of planning control including any B1 and B8 uses. Cease use of the land and any associated buildings for asbestos removal operations. Remove all stored items including building supplies (PPE, site tools, site equipment, plant hire and others) and office supplies from the land and associated buildings. Remove all containers from the land and associated buildings. Remove all trailers and any paraphernalia linked to asbestos removal operations from the land and associated buildings.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (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.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections and a variation.

Preliminary Matter

2. The parties opted for the appeal to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me, as well as my site visit, and do not consider that injustice would arise.

The Enforcement Notice

3. It is apparent the notice has enforced against a mixed use, being a material change of use for storage, office and asbestos removal uses (the mixed use). I shall therefore correct the notice to make reference to this as the mixed use for clarity and in order to put the notice on a proper footing. As there is then no requirement to specify a previous use of land or buildings, I shall omit

reference to agriculture, given planning permissions have previously been granted at the site; and which I shall then consider as necessary for the purposes of my assessment. The requirements of the notice shall then be corrected to require the cessation of the mixed use and removal of associated items, containers, trailers and other paraphernalia so that they follow logically from the allegation. Injustice to the parties does not arise from making these corrections.

The ground (b) appeal

4. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact.
5. To this effect the appellant contends the mixed use is only taking place in and around building 1, being the largest building, and therefore the plan should be corrected to identify only that area of land. He does not dispute the uses cited as being enforced against, and therefore the mixed use as a whole.
6. However, whilst the use might be predominantly taking place within that building, there is also outside storage, the extent of which is not expressly defined. Moreover, there is very little evidence to demonstrate on the balance of probabilities that the unit of occupation does not correspond physically and functionally to the area of land identified by the Council on the plan attached to the notice, notwithstanding any earlier planning permissions, which are not automatically determinative. Accordingly, there is very little evidence before me to demonstrate on the balance of probabilities that the correct planning unit has not been identified.
7. The appellant has therefore not discharged the necessary burden of proof to demonstrate that the alleged breach of planning control has not occurred as a matter of fact.
8. The appeal on ground (b) therefore fails.

The ground (c) appeal

9. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
10. To this effect the appellant contends that planning permission was granted in August 2006 for the change of use of building 1 and surrounding land for B8 storage purposes. It is then accepted that two pre-commencement conditions were not discharged, but the appellant contends the planning permission was nevertheless lawfully implemented. The Council then disputes that the 2006 planning permission was lawfully implemented.
11. However, whether or not the conditions brought to my attention were conditions precedent, the planning permission only relates to a storage use on part of the site. The mixed use enforced against is materially different and therefore even if the 2006 planning permission had been lawfully implemented, it does not assist the appellant to demonstrate on the balance of probabilities that there has not been a breach of planning control.

12. There is then very limited evidence that there is a planning permission for the mixed use, that it is permitted development, or that it does not constitute development. Whilst parts of the site are indeed not being actively used, and the appellant contends these are derelict and vacant, I have already found that the correct planning unit has been identified.
13. The appellant has therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that there has not been a breach of planning control in respect of the mixed use enforced against.
14. The appeal on ground (c) therefore fails.

The ground (d) appeal

15. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
16. The mixed use must therefore have subsisted for a continuous period of 10 years prior to the issue of the notice, which is dated 26 June 2020 (a relevant period). My assessment is therefore very fact specific, based upon the evidence before me.
17. The appellant contends that even if the 2006 planning permission had not been lawfully implemented, it appears to be common ground that the storage use of building 1 commenced in August 2006 and would have acquired immunity in August 2016. The Council then disputes this position as it does not consider there to have been a continuous use.
18. However, whether or not a storage use had acquired immunity from enforcement action, it would again only relate to a storage use. The mixed use enforced against is materially different and therefore even if the storage use in/around building 1 were lawful, it does not assist the appellant to demonstrate on the balance of probabilities that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice; namely the mixed use.
19. There is very little evidence concerning the mixed use enforced against. The appellant has therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
20. The appeal on ground (d) therefore fails.

The ground (a) appeal

Main Issues

21. The main issues are:

- whether or not the mixed use is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework);

- the effect of the mixed use on the landscape and scenic beauty of the Kent Downs AONB; and,
- If the mixed use 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 necessary to justify the development.

Reasons

22. The deemed application relates to the use of the entirety of the site for the mixed use.

Whether inappropriate development in the Green Belt

23. The site is located in the Metropolitan Green Belt.

24. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 137 of the Framework states that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development. Paragraph 138 then specifies the five purposes which the Green Belt serves, including to assist in safeguarding the countryside from encroachment.

25. Policy LO8 of the Sevenoaks Core Strategy, February 2011 (the CS), states that the extent of the Green Belt will be maintained and that the countryside will be conserved, which is broadly consistent with the Framework.

26. Paragraph 150 of the Framework is then concerned with the re-use of buildings provided they are of permanent and substantial construction. Whilst I am satisfied this is the case in respect of building 1, the deemed application that I am assessing relates to the mixed use which encompasses other buildings as well as open storage.

27. There is however no exception or other form of development within the Framework that excludes the mixed use and therefore deemed planning application as an inappropriate development.

28. Moreover, whilst the internal use of building 1 itself preserves the openness of the Green Belt, that is merely part of the mixed use. The openness of the Green Belt therefore has a spatial as well as a visual aspect. Spatially, the mixed use enforced against relates to a large site that is a prominent feature of the rural landscape. Visually, the open storage, parking of vehicles and general paraphernalia, as well use of partially collapsed buildings, is widely visible from the public realm. The mixed use accordingly fails to preserve the openness of the Green Belt and conflicts with the purposes of including land within it.

29. I therefore conclude the mixed use is inappropriate development that is, by definition, harmful and therefore contrary to national policy to protect the Green Belt. This is a matter to which I attach substantial weight.

AONB

30. The site is also located within the Kent Downs Area of Outstanding Natural Beauty. In particular, it is within the Eynsford and Horton Kirby Downs character area. I could see during my site visit that the site is situated in a particularly open and attractive area of rural countryside in close proximity of the lane.
31. The site is therefore widely visible and is prominent within the landscape. The mixed use however introduces open storage that is completely at-odds with the rural character of the area. It therefore fails to conserve the distinctive openness that contributes to the special character of the landscape. The storage and associated paraphernalia, including parking of vehicles, is consequently harmful to the scenic beauty of this rural area. The wider use of the site for the mixed use, including the partially collapsed buildings, represents a decline in the quality of this attractive open landscape.
32. Moreover, the mixed use represents an intensification of use over any previous planning permissions or use at the site. This results in a loss of tranquillity which I accept is a valued character of the Kent Downs and which the AONB Management Plan seeks to conserve against.
33. The appellant states that a condition could be imposed restricting the use of the remaining land as defined in the notice. However, the remainder of the land is substantial and the appellants assertion in this regard is ambiguous. In the absence of a list of suggested conditions for the mixed use and detailed plans to that effect, I am not persuaded that such a fundamental matter can be left to planning conditions. Furthermore, the appellant has not even commented on the list of conditions suggested by the Council, had I been minded to allow the appeal.
34. I conclude the mixed use is harmful and neither conserves nor enhances the landscape and scenic beauty of the AONB in contravention of Policy LO8 of the CS and Policy EN5 of the Sevenoaks Allocations and Development Management Plan, February 2015. These policies, amongst other things, require development to conserve the distinctive features that contribute to the special character of the landscape, noting such areas have the highest status of protection in relation to landscape and scenic beauty. This is a matter to which I attach considerable weight.

Other Considerations

35. The appellant states that if the Council previously considered that a storage use in building 1 was appropriate, the same conclusion can now be reached for it and associated land for storage and office purposes. It is also again contended that this use has long subsisted. However, the use of building 1 for storage purposes is materially different and therefore amounts to a different scheme to that enforced against and therefore the subject of the mixed use notice and deemed planning application. It is therefore not a scheme before me. Whilst the appellant may wish to explore this option further with the Council, for the purposes of my assessment, I afford this materially different proposal neutral weight.

The Green Belt Balance

36. There are no other considerations in favour of the development that clearly outweigh the presumption against inappropriate development in the Green Belt and the substantial weight that the Framework requires to be attached to such harm. Moreover, there is harm to the AONB. The very special circumstances necessary to justify the mixed use do not, therefore, exist.

Conclusion

37. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) fails.

The ground (f) appeal

38. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
39. The appellant contends that the requirement for cessation of B1 and B8 uses is excessive and that it should be corrected to require the removal of outside storage only.
40. However, the corrected enforcement notice now only requires the cessation of the mixed use and removal of such items. The deemed planning application before me then only concerned the mixed use, which I have assessed. The corrected requirements of the notice then do not stymie any other lawful use at the site.
41. In light of this, the requirements of the notice go no further than remedying the breach of planning control and are not excessive.
42. The appeal on ground (f) therefore fails.

The ground (g) appeal

43. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and requests a period of 12 months.
44. There is then only limited evidence before me as to why the tenant does not anticipate being able to find alternative premises in the short term. A period of 9 months therefore strikes an appropriate balance and ensures the breach of planning control is not unnecessarily perpetuated. This will also give the appellant time to explore other options with the Council for building 1.
45. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

46. For the reasons given above I conclude the appeal should not succeed. I shall therefore uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

Formal Decision

47. It is directed that the enforcement notice be corrected and varied by:

- substituting the words '*Change of use of the land and associated buildings to storage for building supplies (PPE, site tools, site equipment, plant hire and others), office supplies, trailers and containers and creation of office spaces and asbestos removal spaces ("the mixed use")*' for those at section 3 of the notice.
- substituting the words '*1. Cease the use of the land and associated buildings for the mixed use. 2. Remove all items, containers, trailers and other paraphernalia relating to the mixed use from the land affected*' for those at section 5 of the notice.
- substituting '*9 months*' as the period for compliance at section 6 of the notice.

48. Subject to these corrections and variation the appeal is dismissed and 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.

Paul T Hocking

INSPECTOR