



Appeal Decisions

Site visit made on 31 August 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20TH SEPTEMBER 2022

Appeal A Ref: APP/G5180/C/21/3272892

Hayes Street Farm , Hayes Lane, Bromley BR2 7LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Lite Scaffolding Ltd against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 15 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, on the land edged in red on the plan attached to the notice, the installation of hardstanding to facilitate the use of the land for the storage of scaffolding equipment and the parking of scaffolding vehicles.
 - The requirements of the notice are: 1. Remove the hardstanding described from the land, and; 2. Prepare the ground to enable the land to revert back to its former condition as rough grassland.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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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Appeal B Ref: APP/G5180/C/21/3272893

Hayes Street Farm, Hayes Lane, Bromley BR2 7LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Lite Scaffolding Ltd against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 15 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land, which is situated in the Green Belt, from an agricultural use to use for the storage of scaffolding equipment and the parking of scaffolding vehicles, within the land edged in red on the plan attached to the notice.
 - The requirements of the notice are: 1. Cease the unauthorised use of any part of the land for the storage of scaffold equipment and the parking of scaffolding lorries, and; 2. Prepare the ground to enable the land to revert back to its former condition as rough grassland.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(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.
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Decisions

1. Appeal A-It is directed that the enforcement notice is varied by in paragraph 5 substituting step 2 with the following step 2 "Restore the land to its condition before the development took place" and in paragraph 6 the substitution of "two months" by "four months" as the time for compliance. Subject to these variations, the appeal is 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.

2. Appeal B-It is directed that the enforcement notice is varied by in paragraph 5 substituting step 2 with the following step 2 "Restore the land to its condition before the development took place" and in paragraph 6 the substitution of "two months" by "four months" as the time for compliance. Subject to these variations, the appeal is 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.

Preliminary Matters

3. The London Plan 2021 (LP) was published in March that year. The LP comprises the spatial development strategy for London and is part of the Development Plan. LP Policy G2 replaces policy 7.16 in the previous version of the London Plan, referenced in the reasons for issuing the enforcement notices. The main parties referred to LP Policy G2 in their written submissions. I have determined the ground (a) appeals in accordance with the LP.
4. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeals. The main parties have been given an opportunity to comment on the implications of the Framework in respect of the ground (a) appeals and I have taken it into account in my decisions.

Background

5. Both enforcement notices and therefore both appeals relate to the same rectangular parcel of land. The appeal site is largely surrounded by roughly hardsurfaced tracks. It is located beyond the built-up part of the village, being adjacent to open fields with tracts of woodland lying beyond. Land between the site and the edge of the village, formerly a complex of farm buildings, is in the process of being redeveloped for housing following the granting at appeal of planning approval and listed building consent in June 2019¹.
6. The allegation in the enforcement notice in Appeal A refers to an extensive area of hardstanding topped with road planings laid on the eastern part of the site ('the hardstanding'). The allegation in the notice in Appeal B refers to the material change in the use of the site to use for storage and parking by a scaffolding firm ('the use').

Appeal A

Ground (d) appeal

7. The ground of appeal is that it was too late to take enforcement action against the breach of planning control alleged in the notice. Where the allegation is one of operational development, as in this instance, the Act at s171B(1) provides that no enforcement action can be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The onus of proof in this respect is on the appellant, the relevant test of the evidence being on the balance of probability.
8. The appellant supplied copies of black and white aerial photographs including the site, the latest of which is dated 8 April 2017. The vast majority of the area now covered by the hardstanding appears to be planted with trees or rough vegetation in those images, with only a handful of metal containers in one corner of the site. From what is shown in those images it is difficult to distinguish the area now occupied by the hardstanding from trees and vegetation elsewhere on the site and in the vicinity. Also, the majority of the

¹ Appeal Refs: APP/G5180/W/18/3206947 & APP/G5180/Y/18/3206949.

area now covered by the hardstanding differs noticeably in terms of its appearance from that of the adjacent track. If the hardstanding had been in existence at the time those images were taken, it is not unreasonable to expect the eastern part of the site to have had an appearance akin to that of the adjacent track, given the similarity in surface materials.

9. Moreover, the Council supplied an aerial photograph including the site, taken in 2016. There is considerable similarity between the appearance of the site surface in that image and that shown in the appellant's 2017 aerial image. The 2016 image is of higher quality and also being in colour, allows for better differentiation between natural and man-made features. It clearly shows that in 2016 trees occupied the majority of the area now covered by the hardstanding, with the remainder of the site largely planted with grass apart from an area with a compacted earth surface adjacent to the southern boundary. This all suggests that the hardstanding was not in existence before 15 March 2017. Furthermore, some local residents made representations to the effect that the formation of the hardstanding occurred as recently as 2019. Only in the Council's site photographs dated 16 March 2021 and in their aerial image from that year is the hardstanding clearly shown and the absence of a significant proportion of the trees and vegetation previously planted on the eastern part of the site apparent.
10. Taking all of the above evidence into account, on the balance of probability I consider that the hardstanding was substantially completed less than four years before the date of the notice. The appellant has been unable to prove otherwise. That being the case, the hardstanding is not immune from enforcement action.
11. The ground (d) appeal fails.

Appeals A and B

Ground (a) appeals

Main Issues

12. The site is located within the Metropolitan Green Belt. Therefore, the main issues in the ground (a) appeals are:
 - Whether the hardstanding and the use constitute inappropriate development, having regard to the effect on the openness and purposes of the Green Belt, the Framework and the Development Plan.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify granting permission for the unauthorised development.

Reasons

Whether inappropriate development-effect on Green Belt openness and purposes

13. The Framework paragraph 150 advises that certain forms of development, including engineering operations and material changes of use, are not inappropriate in the Green Belt where they preserve openness and do not conflict with the purposes of including land within it. Policy 49 of the Bromley Local Plan (BLP) largely reiterates and is consistent with the Framework, whilst LP Policy G2 reflects the policy approach set out in the Framework at a strategic level.
14. The Appeal A hardstanding covers an extensive area of what for the most part was previously open, vegetated land. Its formation has resulted in a

considerable and permanent physical change to the site. A substantial portion of the site surface is now covered by or adjacent to development, where none existed previously. Therefore, from a spatial perspective formation of the hardstanding has led to a significant and appreciable reduction in openness. The Planning Practice Guidance points out that openness is capable of having a visual as well as a spatial aspect². In visual terms the hardstanding is an obviously man-made, engineered feature located within an otherwise largely rural setting. The more urban feel created by the hardstanding is not significantly offset by trees and other planting adjacent to its outer edges.

15. The majority of the site is not within the 'red line' boundary of the approved housing scheme, whilst only the southern quarter is within the area of land outlined in blue as other land owned by the developer. No part of the area now covered by the hardstanding lies within the 'blue' land. The aerial images pre-dating the formation of the hardstanding show around three quarters of the site as having an appearance more consistent with an agricultural use. There is little evidence in the images of those parts of the site being used for purposes related to commercial activity at the former farmyard. Therefore, I am not convinced that references by the Inspector in the 2019 appeals to previously developed land (PDL) can reasonably be interpreted as extending to encompass the majority of the site including the area of the hardstanding. In any event, the Framework paragraph 149 requires the redevelopment of PDL to have no greater impact on Green Belt openness than existing development; as already noted above, prior to formation of the hardstanding that part of the site surface was largely planted.
16. I now turn to the use in Appeal B. During my visit, I observed an accumulation of significant quantities of scaffold components at the site. These included quantities of metal scaffold poles of varying lengths, many of which were in stacks between around 1.5 m to 3 m in height. There were also several stacks of timber scaffold planks, as well as a number of receptacles containing couplings and locking pins, and base plates. The scaffold components were mainly situated on the Appeal A hardstanding, a significant proportion of which was occupied by such items. However, several stacks of scaffold planks were also present elsewhere on the site. Consequently, the use has resulted in a not inconsiderable proportion of the site surface being covered by, or adjacent to, quantities of scaffold components.
17. The quantities of scaffold components present at the site are likely to fluctuate to some extent, depending on factors such as the amount of work the appellant is engaged in. Even so, any components taken off site for use in new work are likely to be replaced relatively soon after by those returned following the completion of a job. The quantities of components present and the extent of the surface coverage observed during my visit was not dissimilar to that shown in the Council's March 2021 photographs. When I visited, two flatbed lorries were present on the hardstanding together with a medium-sized item of plant. One lorry and a similar plant item were also present in the Council's March 2021 photographs. This all suggests that considerable parts of the site surface are likely to remain covered by or adjacent to man-made objects associated with the use for lengthy periods. There is no firm evidence before me which might suggest that the lawful use of the site was similar in terms of its coverage or duration. My findings in relation to the use concerning references to PDL in the 2019 appeal decisions are similar to those set out in relation to the hardstanding. Consequently, from a spatial perspective the use has also led to a significant and appreciable reduction in openness.
18. Furthermore, the scaffold components have largely linear profiles and a considerable number have a metallic finish. Together with the angular forms,

² Paragraph: 001 Reference ID: 64-001-20190722.

bold corporate colour scheme and shiny metallic finishes of the associated vehicles, the scaffold components appear as obviously man-made features in their surroundings. The above contrasts starkly with the more muted colour tones and naturalistic shapes of the largely rural setting. As a result, the use has given substantial parts of the site an appearance normally associated with an industrial context such as a trading estate, thereby contributing to a greater built-up feel in the environs. The sense of significant parts of the site being occupied by what are generally regarded as urban features is readily apparent in views from a nearby public right of way and is also highly likely to be experienced by occupiers of residential property in the vicinity. Such visual effects are likely to be materially different to those arising from activity associated with the lawful use of the site and have led to an obvious and significant diminution in openness in local views.

19. Therefore, the hardstanding and the use fail to preserve Green Belt openness, in terms of both spatial and visual perspectives. At paragraph 137, the Framework advises that openness is an essential characteristic of Green Belts. Moreover, by introducing inherently urban forms of development into a largely rural setting, the hardstanding and the use have had an urbanising influence amounting to encroachment into the countryside. This conflicts with one of the purposes of including land within the Green Belt, set out in the Framework paragraph 138.
20. For the above reasons, the hardstanding and the use constitute inappropriate development in the Green Belt, being inconsistent with the Framework paragraph 150 and failing to accord with BLP Policy 49 as well as LP Policy G2. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I attach substantial weight to the harm to the Green Belt, in accordance with the Framework paragraph 148.

Other considerations

21. The site forms part of the setting of the Grade II listed former farmhouse and the Hayes Village Conservation Area. However, neither the hardstanding nor the use have had a perceptible effect on the significance of the designated heritage assets.

Planning balance

22. The hardstanding and the use fail to preserve openness and amount to encroachment into the countryside, thereby constituting inappropriate development in the Green Belt. There are no other considerations that would clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify granting permission for the hardstanding and the use do not exist.

Ground (a) appeals-conclusions

23. The hardstanding and the use are inconsistent with the Framework and do not accord with the Development Plan. Therefore, I conclude that the ground (a) appeals should not succeed.

Ground (f) appeals

24. The ground of appeal is that the requirements of the notices are excessive.
25. An enforcement notice can have two purposes. Firstly, it can seek to remedy the breach of planning control, including by restoring the land to its condition before the breach took place. Secondly, the notice can seek to remedy any injury to amenity caused by the breach. In Appeal A, the notice requires nothing less than the removal of all of the hardstanding and restoration of the

site. In Appeal B, the notice requires cessation of the use in its entirety and the removal of all incidences of that use, as well as the site's restoration. Therefore, although the notices do not state as such, in both cases their purpose must be to remedy the breach.

26. Retaining the hardstanding, either as a whole or in part, would not remedy the breach in Appeal A, as the site would not be restored to its pre-breach condition. Similarly, varying the notice in Appeal B so that it did not prevent the parking of scaffold lorries would not remedy an integral part of the breach. As this would also mean that incidences of the use would remain, the site would not be restored to its pre-breach condition. No alternatives that would remedy the breach whilst stopping short of removing the hardstanding and ceasing the use were drawn to my attention and to my mind, there are none. Such steps are therefore the minimum remedy for the respective breaches.
27. Both notices go on however in step 2 to require the ground to be prepared to enable its reversion back to rough grassland. It is evident that the site was partially planted with trees prior to construction of the hardstanding, whilst another part had a compacted earth surface. It seems to me therefore that in both cases step 2 would impose a more onerous requirement than restoring the site to its condition before the breach took place. It is not within the scope of an enforcement notice to require the undertaking of works that would result in an improvement over the previous condition of the land.
28. Consequently, I shall vary both notices so that the second step requires the site to be restored to its condition before the development took place. This will be sufficiently clear. The appellant is likely to have the best knowledge of the previous condition of the site. The ground (f) appeals succeed to that extent.

Ground (g) appeals

29. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
30. Removal of the scaffold components and vehicles associated with the use is likely to be a relatively straightforward affair, taking perhaps a few days at most. Nevertheless, compliance periods of two months afford the appellant limited time in which to search for and secure suitable alternative premises whilst also removing the hardstanding. In practice, it is likely that the use would have to cease within a much shorter timescale, having regard to the amount of time that would be involved in removal of the hardstanding. During this period, the appellant would also have to continue to fulfil any existing contractual commitments to customers, as well as trying to sustain this arm of the firm and ensure the continuity of employment for staff.
31. The appellant may well have other premises closer to central London. However, it is unlikely that simply relocating there would be suitable in terms of serving a customer base which for the most part is probably made up of construction firms working on the south and east sides of the capital. Nor would the other premises be convenient for any staff living within a reasonable distance of the site. Moreover, it is not clear whether such a relocation would be practicable-for example, the other premises could already be at capacity or be subject to constraints precluding its greater use. As the appellant is entitled to assume that their ground (a) appeals would succeed, undertaking the developments without obtaining planning approval has little bearing on the reasonableness of the periods for compliance.
32. Therefore, compliance periods of four months would in my view offer a more realistic timescale, by allowing the appellant to find suitable alternative premises and to relocate this arm of the firm in an orderly fashion before removing the hardstanding. This would strike a better balance between

ensuring that the planning harm identified above is remedied as soon as is practicable, whilst also minimising the disruptive effects on the firm as far as is reasonably possible and avoiding imposing a disproportionate burden on the appellant. It follows from this however that extending the compliance periods further would achieve little beyond perpetuating the planning harm caused by the developments.

33. Consequently, I conclude that the two-month periods specified in the notices are unreasonably short and that reasonable periods for compliance would be four months. The appeals under ground (g) succeed to that extent.

Conclusions

34. For the reasons given above, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notices with variations and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR