



Appeal Decision

Site visit made on 1 November 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/J1535/C/21/3272647

Land at 151-153 Millrite Mews, London Road, Stanford Rivers, Ongar, Essex CM5 9QF

- 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 Nicholas Hagger against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 24 February 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of the Land for the storage of a container, portable buildings, skips, building equipment and materials.
 - The requirements of the notice are to:
 - i. Cease the unauthorised use of the Land, as shown outlined in black on the attached plan.
 - ii. Remove from the Land, all containers, portable buildings, skips, building materials and equipment and any other paraphernalia connected or associated with the unauthorised use.
 - iii. Remove from the Land, the metal gates, supporting pillars and concrete pad as shown hatched on the attached plan.
 - The time period for compliance with the requirements is two (2) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) and the prescribed fee has been paid, an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and falls to be considered.
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Formal Decision

1. It is directed that the enforcement notice be corrected by deleting the wording 'and concrete pad' from its Section 5, Requirement 3. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Preliminary Matters

2. When the appeal was initially lodged it was made solely on ground (a) ie. that planning permission should be granted for the development enforced against. However, when reading through the appellant's representations it became clear that immunity from enforcement action was also being claimed. In the circumstances, and as the Council had not had the chance of addressing the claims, both main parties were asked whether they wished to make further comments on this matter. Both responded and, as such, I have included and

assessed the evidence as though an appeal had also been specifically made on ground (d).

Matters concerning the enforcement notice

3. The appellant indicates that an area of hardstanding, as operational development, enjoys immunity from enforcement action. There is a shallow area of hardstanding immediately outside the site which starts at the dropped kerb and extends the depth of what would have previously been the grassed verge area up to the site's metal gates. I am assuming this to be the 'concrete pad' referred to in Requirement 3 of the notice. It is, though, unclear to me whether this piece of land is in the ownership of and/or, under the control of the appellant, or whether it is under the ownership of the local highway authority (LHA), as one would normally expect.
4. I note the LHA was not one of the parties served with the enforcement notice, but I have also had regard to the appellant's comment that "*the heavy black line includes land that is not within the appeal site*". I consider, on the balance of probabilities, this to be the case and I shall therefore correct the notice and delete the reference to the 'concrete pad'.

Background

5. It is understood that Millrite Engineering (ME) had occupied the piece of land the subject of the enforcement notice for its own commercial purposes prior to the appellant purchasing the land in 2008. However, at that time the said land was part of a considerably larger area of land, which ME also occupied, until the two parcels of land were severed following planning permission having been granted in 2011 for the erection of four dwellings. In addition, though, I note that the plan attached to the enforcement notice shows that this piece of land extending further south eastwards than the southern boundary of the 2011 application site.
6. The appellant indicates that, up until the time construction works commenced on the approved housing scheme ME, by agreement, continued to use the land for its purposes. Once works commenced, however, the appellant recalls in paragraph 2.6 of his Written Statement that the land ringed on the enforcement notice plan was used as a compound area for vehicles, offices, welfare cabins, storage containers and building materials.
7. The dwellings have since been built but, it is clear that the appeal site should have been included within the redevelopment scheme as, on the approved site plan, the dwellings' rear gardens are shown stretching across the land to its western boundary. As such, it would seem clear that the development has not been implemented in accordance with the approved plans.
8. At my site visit I noted that there is a clear boundary enclosure in the form of timber fencing between the housing and the appeal site which has, once again, returned to an independent storage use.

The appeal on ground (d)

9. The appeal on ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control had already acquired immunity from such in planning terms.

10. Taking into account the date of issue of the notice and, depending on whether the identified breach comprises operational development or a material change in the use of the land, the material date will be either four or ten years immediately prior to this.
11. The onus is on the appellant to prove his case, with the burden of proof being on the balance of probabilities. Such cases cannot take into account planning merits or impact and, as such, my decision has to be based on evidential fact and, where applicable, case law.
12. The appellant takes the view that, despite not releasing the appeal site to form part of the residential scheme, as is required by way of the approved plans, the land has retained its commercial use rights, accrued from ME's occupation, and can be again used, independently, for storage purposes et al. I disagree. The implementation of the approved housing development of the majority of the original site represented a new chapter in the land's planning history, for which the land the subject of the enforcement notice would have played a part, with the approved plans showing its inclusion within the development scheme.
13. Notwithstanding this apparent irregularity the use of the appeal site as a compound to facilitate the housing construction means that this piece of land's primary use for storage purposes was then discontinued due to its new role as ancillary to the residential development.
14. The land's subsequent re-use for storage purposes, being severed and independent from the new housing site, effectively means that immunity from enforcement action was lost and the use's recommencement required the benefit of planning permission. In such circumstances the Statutory Declarations provided are of little value, and reference to previous buildings on the site have no bearing on this appeal.
15. The appellant claims that the hardstanding was laid in 2011 and I assume this is reference to the 'concrete pad' which I have already addressed. However, in terms of the other items targeted by the enforcement notice I must refer to the judgement of *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598 where it was held that an enforcement notice directed at a material change in the use (MCU) of land can require the removal of ancillary operational development within the ten year immunity period applying to a MCU, even if the four year limit has passed if the works have facilitated the unlawful use. Given that the appellant has made no specific representations relating to the other items referred to in the notice's Requirements 2 and 3 I must conclude that this is the case here.
16. The Council was therefore entitled to issue an enforcement notice requiring the use's cessation, and removal of associated operational development.
17. The appeal on ground (d) therefore fails.

The Appeal on ground (a) and the deemed planning application (DPA)

Main Issues

18. The site lies within the Metropolitan Green Belt. The main issues in this case are therefore:
- 1) whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and, if so, the effect of the development on the openness of the Green Belt;
 - 2) whether the development would create any other harm, with particular regard to highway safety and also the effect of the development on the Epping Forest Special Area of Conservation; and
 - 3) if it is inappropriate development, whether the harm by reason of inappropriateness and by reason of any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development and Openness

19. All development in the Green Belt, be it uses of land or operational development, is inappropriate for the purposes of the National Planning Policy Framework (the Framework) unless it accords with the exceptions listed in paragraphs 149 and 150 of the document. The development at issue does not fall within either of these, and I therefore must conclude that the storage use enforced against constitutes inappropriate development within the Green Belt.
20. Inappropriate development is, by definition, harmful to the Green Belt and the Framework indicates that it should not be approved except where very special circumstances can be demonstrated. Further, Policy GB2A of the Epping Forest adopted Local Plan and Alterations (LP) serves to guard against inappropriate development within the Green Belt.
21. The Framework goes on to say that when considering any planning application substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
22. The Framework states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open, and that development should not compromise the purposes of including land in the Green Belt.
23. The relationship between visual impact and openness is important here. In the judgement of *John Turner v Secretary of State for Communities and Local Government*, heard in the Court of Appeal, it was said that the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. A more recent 2020 judgement (*Samuel Smith Old Brewery and others v North Yorkshire CC*) concluded that matters relevant to openness in any particular case are a matter of planning assessment.

24. The storage use enforced against, although somewhat low key at the time of my site visit, has the potential to intensify and become significantly obtrusive. This would affect not only the Green Belt's openness but also the land's character. It thereby also conflicts with those policies cited which I find particularly applicable in this instance; namely LP policies GB7A, LL1, LL2 and CP2, along with policies SP6 and SP7 of the Council's Submission Version of the Local Plan.
25. I therefore find that the development runs contrary to the Framework's objectives, and is also in material conflict with the above policies.

Any other identified harm

26. The Council also indicates that the point of vehicular access to the site is not adequate and considers that, in the context of the ingress and egress being off a classified road, the continuation of the use with its attendant vehicles would be prejudicial to highway safety. However, I have received no technical evidence in this regard. Similarly, I have received no details as to the proximity of the Epping Forest Special Area of Conservation, and am therefore uncertain as to the site's proximity thereto, and am unable to properly assess the effect of the development in this particular regard.
27. Nonetheless, given that I am dismissing this appeal on other substantive matters, it is not necessary that I explore the above issues further.

Other matters

28. The appellant says in his representations that the Council's adopted local plan is out of date and that the Framework should take precedence. Indeed, I have made full reference to the development being in conflict with government policy concerning Green Belt land. Further, due to the aims, objectives and requirements of the policies cited from the local plan, I can say with confidence that these are directly applicable to the development enforced against. A plan being 'out of date' more typically relates to housing land supply which may have lessened over time. Similarly, the same applies to the policies I have referred to from the replacement Local Plan's Submission Version document.
29. The appellant also mentions that the appeal site is 'brownfield' or previously developed land. That may be the case, but it does not alter the fact that the storage use represents inappropriate development which adversely affects the Green Belt's openness.

Conclusions on the DPA

30. The use is inappropriate development in the Green Belt for the purposes of the Framework, is harmful to its openness and also the landscape, and is in material conflict with the development plan as a whole.
31. The very special circumstances necessary to outweigh the presumption against this development within the Green Belt does not exist. The appeal is therefore dismissed, planning permission is refused, and the enforcement notice is upheld.

Timothy C King

INSPECTOR