



Appeal Decisions

Site visit made on 10 January 2023

by R J Perrins MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 February 2023

Appeal A Ref: APP/X0415/C/18/3201804

Land to the rear of Bubbles Car Wash, London Road, Little Kingshill, Buckinghamshire, HP16 0DH.

- 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 A Ahmed against an enforcement notice issued by Chiltern District Council.
 - The enforcement notice was issued on 28 March 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a sui generis mixed use for the stationing and storage of motor vehicles and motor vehicle parts, the preparation of motor vehicles for sale, the stationing and storage of a skip and of nine metal storage containers ("the Unauthorised Use").
 - The requirements of the notice are:
 - 5.1 Cease the Unauthorised Use of the Land; and,
 - 5.2 Remove all vehicles, motor vehicles, vehicle parts, skips and storage containers associated with the Unauthorised Use from the Land; and,
 - 5.3 Cease the use of the Land for the preparation of motor vehicles for sale; and,
 - 5.4 Remove from the Land all debris and materials arising as a result of compliance with the steps above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(g) 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.
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Appeal B Ref: APP/X0415/C/18/3201807

Land to the rear of Bubbles Car Wash, London Road, Little Kingshill, Buckinghamshire, HP16 0DH.

- 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 A Ahmed against an enforcement notice issued by Chiltern District Council.
 - The enforcement notice was issued on 28 March 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the carrying out of operational developments on the land compromising:
 - (1) the construction of hardstanding in the approximate location shown cross hatched on the Plan; and
 - (2) The construction of wooden fencing and concrete fence posts in the approximate location shown with a dashed black line on the Plan; collectively called the "Unauthorised Development".
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- The requirements of the notice are:
 - 5.1 Break up and remove the area of hard standing as shown cross hatched on the Plan;
 - 5.2 dismantle and remove from the land the fencing and fence posts shown with a blue line on the plan; and
 - 5.3 remove from the land all debris and materials arising as a result of compliance with the steps above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(d),(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions - Appeals A & B

1. The appeals are dismissed, and the enforcement notices are upheld with a correction and variation in the terms set out below in the Formal Decisions.

Application for costs

2. An application for a partial award of costs was made by Mr A Ahmed against Buckinghamshire Council. This application is the subject of a separate Decision.

Preliminary & Procedural Matters

3. In accordance with the Planning Inspectorate's Procedural Guide Enforcement notice appeals – England (November 2020), the appeals were being determined by means of a combined procedure. The appeals on grounds (b), (c) and (d), which deal with matters of fact, were to proceed by way of Inquiry. Evidence concerning that was to be given on oath or by sworn affirmation. Evidence concerning the appeals on grounds (a), (f) and (g) was to proceed by way of written representations.
4. However, following the submission of the Council's proof of evidence, the appellant submitted a costs application and withdrew grounds (b),(c) and (d) in respect of Appeal A and requested the remaining grounds be considered by way of written representations. I saw no reason to disagree and have proceeded on that basis.
5. Since the notices were served, Chiltern District Council was abolished (31 March 2020) and is now part of the unitary Buckinghamshire Council.

The enforcement notice – Appeal A

6. The Council have suggested that the allegation in the enforcement notice for Appeal A is amended for clarity as the 'stationing and storage of a skip and nine metal containers' is not a use of land in itself. The allegation should be amended to include the words 'in association with the mixed use of the site'. It is clear from all the representations that the appellant understands the breach and what they are required to do to comply with the notice.
7. Thus, to amend the notice in such a way, would not lead to prejudice to either party and I shall use the powers I have under s176.

The enforcement notice plan – Appeal B

8. There is agreement between the parties that the hatched area on the enforcement notice plan should not cover the area to the east which has historically been used as an access to the site. Reference to it should be removed. I see no reason to disagree. I accept the access has been in situ for

many years, as evidenced by the undisputed photographs. I will issue a new plan showing the area of hardstanding, agreed to be lawful, excluded from the area hatched and referred to in requirement 5.1 of the notice.

Appeal B – the appeal on ground (c)

9. The ground of appeal is that the matters alleged in the enforcement notice did not constitute a breach of planning control. The onus is upon the appellant to demonstrate that no breach has occurred. The relevant test being on the balance of probability.
10. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 2, Class A grants planning permission for development including the erection of gates, fences and walls. Paragraph A.1 of Class A limits the height of such development to not exceeding 1 m where it is adjacent to a highway used by vehicular traffic (paragraph A.1 (a) (ii)) and up to 2 m elsewhere (paragraph A.1 (b)).
11. As the fence is more than 1 metre high it is necessary to establish whether it is 'adjacent' to the highway. To that end there is no definition in statute. What is adjacent to a highway will depend on individual, site-specific circumstances and will be a matter of fact and degree in every case. The courts have held that to be 'abutting' a highway does not mean to actually touch it. The previous references to 'abutting' have been replaced by 'adjacent' in the GPDO.
12. Nevertheless, it does not necessarily follow that gates, fences and walls situated further from a highway are incapable of being adjacent to it. Although other dictionaries might offer a differing definition, the Compact Oxford English Dictionary defines 'adjacent' as 'next to or adjoining something else'. This also suggests that it is enough for a gate, fence or wall to be next to a highway in order to be adjacent to it.
13. There is no dispute that the fence is not set back a great distance (some 5m) from the carriageway edge along with a low flint wall to which the fence sits directly behind. The fence and wall are closely related to one another and are viewed and function as part of the same means of enclosure. They also provide a visual and physical barrier protecting what is beyond them. The two serve as the boundary between the property and the highway, appearing as one entity.
14. In my view when viewed from the highway they would be perceived together as the means of enclosing the appellant's land. Consequently, both in terms of how the fence is perceived visually and functionally, it is not unreasonable to conclude that the fence is, as a matter of fact and degree, next to or adjoining the highway.
15. Therefore, I find that the works are adjacent to the highway. It follows that the works exceed the 1m height limit at Class A paragraph A.1 (a)(ii), they do not fall within the ambit of the GPDO and in the absence of a grant of express planning permission, the fence is in breach of planning control.
16. The ground (c) appeal therefore fails.
17. I have been referred to an appeal decision dated 10 June 1996 (ref:T/APP/C/95/H515/63907) concerning the erection of a fence. However, that fence was found to be not contiguous with the highway and separated by bollards and a low wooden rail; that is unlike the situation I have considered here.

18. In the same way a further decision dated 30 November 1999 (ref:T/APP/C3620/C/99/1027562) considers a fence which is unlike that before me in that it was set back from the highway with trees shrubs and a post and wire fence between the two. Moreover, as demonstrated by further cases submitted by the Council¹ each case must be determined on its own facts.

Appeal B - the appeal on ground (d).

19. Under this ground of appeal, the onus is again upon the appellant to demonstrate that it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act, ie that the alleged operational development was substantially complete four years prior to the issue of the notice. On the face of the notice the salient date would be 28 March 2014.
20. However, the Council have referred to the principles established in *Kestrel Hydro*² and *Murfitt*³ and suggest that as the fence and hardstanding have facilitated the change of use embraced by the notice for Appeal A, the notice should be amended to refer to 10 years and to do so would not lead to prejudice.
21. I disagree, there would inevitably be injustice to the appellant who would need to demonstrate a longer period for the operational development alleged. Furthermore, the principles established applied to a material change of use notice, not an operational development notice as in this case. Whilst the notices in Appeal A and Appeal B together embrace the change of use and operational development, they stand alone targeting separate developments and must be considered as such.
22. Even if I am wrong in that, my consideration under the 4-year rule would have no different outcome. I say that as the appellant, with regards to the fence, has simply stated that the fence has been in situ for four years prior to March 2018. No evidence is provided to support that proposition, save for the statement from the appellant that the inner fence was erected for security purposes in late 2013 or early 2014. However, that statement remains untested and there is no corroborating evidence such that the burden of proof would be met with regards to the fence in any event.
23. With regards to the hardstanding I accept that the enforcement notice plan covers both the access road and a strip to the north. I have amended the plan in respect of the access road. The appellant relies on a number of photographs to advance the case that the hardstanding, as largely seen today, has been in situ for the requisite four years.
24. Turning to those photographs I accept they indicate that hardstanding has existed toward the front of the site. In addition, the access road can be clearly seen on the aerial photographs dated 2008 which are undisputed. However, those photographs also indicate that there was a strip of land directly behind the wall that was not laid to hardstanding. Furthermore, the quality of the aerial photograph dated 2011 is poor and does not enable the viewer to come to any firm conclusion as to the extent of the hardstanding at that time. Whereas the 2017 photograph indicates hardstanding up to the wall and the boundaries as hatched on the enforcement notice plan.

¹ APP/Y3615/X/21/3281608, APP/Q3115/X/16/3150593 & APP/N4720/X/22/3292363

² *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784

³ *Murfitt v SSE and E.Cambridgeshire DC* [1980] 40 P&CR 254

25. Whilst I have the appellant's statement setting out that the area already had a hard surface with scalplings, and in 2014 the area was recovered with scalplings, that view also remains untested. The aerial photographs (AA6, AA7 and AA8) showing vegetation on the frontage are also at odds with that. Neither do those photographs identify the extent of hardstanding to the west or south. There is some inevitability therefore that I find, on the balance of probability, that the extent of the hardstanding was added to in all directions, save for where the access road exists, after the salient date. In coming to that view I have taken into account all of the other statements and declarations which are also untested and do not add anything of significance to the appellant's case in respect of the hardstanding or fence.
26. The appeal on ground (d) therefore fails in respect of the fencing and revised area of hardstanding.

Appeal B - the appeal on ground (a)

Main issues

27. The site is in the Green Belt. No case has been put forward that the fence or hardstanding is not inappropriate development. The National Planning Policy Framework (the Framework) establishes that the construction of new buildings is inappropriate subject to a number of exceptions. The term 'building' refers to any structure or erection and it therefore includes fences. They are not in the list of exclusions at paragraph 149 and the fence is not an extension or alteration of a building.
28. There are no arguments either that the hardstanding, an engineering operation, falls within an exception as set out in paragraph 150. From all that I have seen and read I see no reason to find otherwise. When judged against the wording of national policy the fence and hardstanding are inappropriate development in the Green Belt.
29. Given that the main issues are:
- the effect of the development on the openness of the Green Belt and the purposes of designating land within the Green Belt;
 - the effect of the proposal on the character and appearance of the area and the Chiltern Area of Outstanding Natural Beauty (AONB).; and
 - would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Openness and purposes

30. The appeal site sits between the A413 to the front and River Misbourne to the rear. A brick flint wall approximately 1 m high faces the highway and set just behind that is the fence consisting of close boarded timber. At the time of my visit the area was being used for the storage/parking of vehicles. To the west is Bubbles car wash. Given the amendment to the enforcement notice plan my deliberations do not include the area of hardstanding now excluded.
31. The fence is a solid, man-made feature where one did not exist previously openness has inevitably been reduced and views across the site restricted by the fence. The hardstanding has facilitated the storage of vehicles which also

have an adverse effect on the openness of the Green Belt; vehicles being stored where previously there would have been none. Views of the fence, and storage of vehicles beyond, are clearly available from the adjacent busy road and thus there has been a visual reduction in openness.

32. Overall, the spatial harm from the fence and hardstanding, along with increased level of activity that has occurred by way of storage of vehicles, although transient, has led to a permanent and not insubstantial reduction to the openness of the Green Belt.
33. In addition, the Framework sets out that the Green Belt serves five purposes; the third being to assist in safeguarding the countryside from encroachment. The development has encroached onto undeveloped land within the Chiltern AONB and as such has not assisted in safeguarding the countryside from encroachment and conflicts with that purpose.

Character and appearance

34. There is some development along this part of the road, the carwash adjacent, and the old filling station opposite along with other built form but the location is essentially rural. The fence is clearly visible and is a suburban feature that contrasts unfavourably with the generally green fringes of the road particularly to the east and the river corridor to the south. The hardstanding facilitating the vehicle storage compounds that harm in the countryside location and AONB.
35. I say that recognising the built form at the car wash. Although that does not justify further built development within the AONB. The fence and hardstanding are not compatible with the location or the AONB and draw the eye. In addition, they detract and are at odds with the natural form of the riverside setting. For these reasons I find the development has led to unacceptable harm to the character and appearance of the area.

Other considerations

36. I accept the hardstanding would have contributed to the appellant's business operations and to employment. However, given the size of the area any contribution to the overall business operation would be minimal. I recognise the fence provides some security and a hedge could be planted without the need for permission to replace it. In addition, such planting could be required through condition and once matured the fence removed.
37. However, there are other less intrusive methods of securing the site and a hedge would be a more visually appealing than the built form in this location. Nevertheless, securing such planting by way of condition to replace the fencing would not overcome the harm I have found to the openness of the Green Belt. These matters therefore carry minimal weight.

Conclusions

38. The fence and hardstanding are inappropriate development in the Green Belt. Substantial weight must be attached to any harm to the Green Belt. There is also reduction in openness of the Green Belt and unacceptable harm to the character and appearance of the area and AONB. Even when taken together the other considerations do not clearly outweigh these objections. Consequently, no very special circumstances exist.
39. Therefore, having considered all matters raised, I find the development is at odds with the Framework and Policies LSQ1, GC12, GB2 and GB22A of the

Chiltern Local Plan Adopted 1 September 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011. Those policies seek, amongst other things, development which preserves the natural beauty of the AONB, respects the character of land in vicinity of a river and protects the Green Belt.

40. Thus, the appeal on ground (a) fails.

Appeal B - the appeal on ground (f).

41. The ground of appeal is that the requirements of the notice are excessive. At s173(4), the Act provides that an enforcement notice can have two purposes. These are to remedy the breach, which can include making development comply with the terms (including the conditions and limitations) of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place, or to remedy any injury to amenity caused by the breach.
42. The ground (f) appeal is focussed on the fence alone. To that end, the purpose of the notice is stated as being not only for the purposes of remedying an injury to amenity. Furthermore, the notice requires removal of the fence as opposed to, for example, requiring a reduction in the height to an extent that amenity is no longer adversely affected. Therefore, the purpose of the notice must be to remedy the breach by restoring the property to its condition before the breach took place. There is no lack of clarity in what the notice requires the appellant to do.
43. Varying the notice to require reduction in the height of the fence to be reduced to that commensurate with the requirements of the GPDO (i.e. 1 metre high) would not restore the property to its condition before the breach took place, as no part of a development undertaken in excess of GPDO limits is lawful. Nevertheless, enforcement action is intended to be a remedial measure. A fence not exceeding 1 m in height could be erected at the property adjacent to the highway to accord with Class A, following compliance with the notice. It would seem reasonable therefore to consider varying the notice to ensure retention of the fence reduced in height.
44. However, given the existence of the flint wall, the appellant would have an established physical boundary along the property frontage in any event, once the fence was removed. That would serve the same purpose as a reduced fence would. Thus, the prospect of the fence being re-erected up to 1 metre high shortly after its removal, in the event the notice is upheld, would seem unlikely. As such I find that the steps required by the notice are not excessive for their purpose.

45. The appeal on ground (f) fails.

Appeal A & B – the appeals on ground (g)

46. The ground (g) appeals are made upon the basis that the period for compliance is too short. The notice for Appeal A requires, in brief, cessation of use and removal of all the associated vehicles, motor vehicles, vehicle parts, skips and storage containers associated with the use, along with all debris and materials arising as a result of compliance. With respect to Appeal B it requires the removal of fence and hardstanding. The arguments for the ground (g) appeals are the same albeit for Appeal B are focussed solely on the removal of the fence.

47. I accept that the use of the land for the storage of motor vehicles awaiting the display for sale, or preparation for sale is an integral and vital part of the appellant's business on the adjacent site. There is also no dispute that there is a restrictive condition on the adjoining former petrol filling station site. However, there is nothing before me to corroborate the view that 3 months is insufficient time to find an alternative site.
48. Whilst I recognise that may be difficult, and that having extra vehicles to hand enables the business to function effectively, the appellant has been aware of the potential need to comply with the notice for many years. In simple terms that compliance is removal of vehicles and other items, along with the removal of the fence and relatively small areas of hardstanding. These are straightforward procedures for which 3 months is, in my view, and on the evidence before me, a reasonable period.
49. Thus, the appeals on ground (g) also fail.

Conclusion – Appeals A & B

50. For the reasons given and having considered all matters raised, I shall uphold the enforcement notices with a correction and variation and the appeals will be dismissed.

Formal Decision – Appeal A .

51. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction. It is directed that the enforcement notice is corrected by the substitution of the words 'in association with the mixed use of the site' after the words '..storage containers' in the alleged breach of planning control. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Formal Decision - Appeal B

52. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation. It is directed that the enforcement notice is varied by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld

RJ Perrins

Inspector



Plan

This is the plan referred to in my decision dated: 13 February 2023

by R J Perrins MA

**Land at: the rear of Bubbles Car Wash, London Road, Little Kingshill,
Buckinghamshire, HP16 0DH**

Reference: APP/X0415/C/18/3201807

Scale: Not to Scale

