
Appeal Decision

Site visit made on 7 February 2023

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 2 March 2023

Appeal Ref: APP/C2741/C/22/3303341

Spring Wood Stables, New Road, Escrick, York YO19 6EZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act), as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Sean Duggen against an enforcement notice issued by York City Council.
- The enforcement notice was issued on 7 June 2022.
- The breach of planning control as alleged in the notice is as follows:
Without planning permission the laying of hardstanding on undeveloped land within the York Green Belt.
- The requirements of the notice are as follows:
Remove all hardstanding from the land and return the land to grass as it was prior to the hardstanding being laid.
- The period for compliance with the requirements is *Three Months*.
- The appeal is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed. See formal decision below.

Background information

2. The appeal site is located approximately 1.2 km north-east of Escrick village, within the open countryside, Flood Zone 1 (low risk) and within the general extent of the City of York Green Belt. It is located to the east of the A19 and to the south of New Road, approximately 1km from its junction with the A19. The site is a field which forms part of the appellant's land comprising private stables, an equine exercising area and an agricultural building. The northern boundary to New Road is defined by a tall hedge, whilst the western and southern boundaries are comprised of post and wire fencing. The eastern boundary is formed by another hedge.

3. The field is currently used for the keeping of horses and for the grazing of sheep. The appellant has also placed 5 'Shepherds Huts' on the land which are let out to holidaymakers. It is indicated that the hardstanding is required and used in conjunction with the huts, as an access road and for vehicle parking. The larger site also contains a stable block, an equine exercise arena and an agricultural shed located in the north eastern corner of the field. The appeal site is in the north-west corner of the holding.

4. The Council has accepted that the 'Shepherds Huts' are considered to fall within the definition of a caravan and that officers are satisfied that the associated raised platforms, hottubs, fencing etc, together with detachment from gas, electricity, and drainage for the huts could be removed from the site within an hour. The appellant has previously indicated that the huts would be removed from site when not in use.

5. The LPA has also accepted that the site has an exception certificate (issued by Freedom Camping) under Part 5 of the GPDO, and paragraph 5 of Schedule 1 of the Caravan Sites and Control of Development Act 1960. This is a temporary certificate which needs to be renewed annually.

6. In 2013 planning permission was granted for the stable block and the arena and exercising area (13/00851/FUL). In the same year approval was given for the agricultural storage building (13/00855/FUL), as well as for non-material amendments to the stables. In 2015 permission was refused, on Green Belt grounds, for the erection of a dog kennels and the siting of a temporary dwelling. An appeal against the decision was dismissed (Application 15/00555/FUL; Appeal APP/N2739/W/15/3140157). In that appeal the Inspector had concluded that the site lay within the general extent of the City of York Green Belt.

7. In 2018 a site visit by Council Officers noted that a partially constructed access track had been formed on the land. A retrospective application (19/00184/FUL) for its retention was withdrawn. Another retrospective application (19/01519/FUL) for the installation of a package sewage treatment plant was approved in 2019. In 2020 the erection of a temporary dwelling and an agricultural building for the housing of livestock was refused permission on Green Belt, isolated location, and essential need not demonstrated grounds (20/02444/FUL).

8. Works had commenced on the layout of the access road in November 2018 and it runs parallel to the northern boundary for a length of around 50m, with a 20m return to the east. It is indicated that the site preparation works involved the removal of 300mm of topsoil; the laying of a 150mm deep hardcore base followed by the top layer of around 80 tons of plantings.

Relevant Policy

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for York comprises the Neighbourhood Plans as set out in the LPA statement and the saved policies of the Yorkshire and Humber Regional Spatial Strategy (RSS) relating to the general extent of the York Green Belt. These are policies YH9(C) and Y1 (C1 and C2). The full policy context is set out in the Council's appeal statement.

10. Policies within the emerging Draft Local Plan 2018 (DLP 2018), although not part of the development plan, can be afforded weight in accordance with paragraph 48 of the NPPF as revised in February 2019, due to the advanced stage of preparation and because of the degree of consistency of the relevant policies to those in the National Planning Policy Framework (NPPF). The most relevant policies are Policy SS2 and GB1 which relate to the role of York's Green Belt and development within the Green Belt. The NPPF is a major material consideration as is Planning Policy Guidance.

The gist of the case for the appellant

11. It is contended on behalf of the appellant that the works as carried constitute '*engineering operations*'. This is one of a number of '*other forms of development*' (set out in paragraph 150 of the NPPF) which are not inappropriate development

within the Green Belt, provided they preserve its openness and do not conflict with the purposes of allowing land within it.

12. Reference is made to the definition of '*engineering operations*' as normally being those activities which involve the alteration of the profile of the land by excavation, embanking or tipping, or those activities which change the character of the surface by the laying down of hardstanding. Reference is also made to Section 336 of the Act which states such operations include the formation and layout of the means of access to a highway.

13. Reference is also made to normally accepted criteria that in defining '*engineering operations*' they must be undertaken by persons carrying out a business as an engineer. However, it is also stressed that in the case of *Fayrewood Fish Farms v SoS and Hampshire County Council (Fayrewood)* it was held that whilst an engineering operation could be one that would generally be supervised by an engineer, it was not essential for an engineer to be engaged. In any case, it is stressed that in this case the operations carried out were guided and informed by an engineering company.

14. With regard to the effect of the hardstanding on the openness of the Green Belt, it is stressed that the access road generally follows the contours of the land on either side and is level with the land. It is indicated that there are no edges to the access road and no lighting. It is also stressed that the visual impact of the track is clearly limited from the north to views through the site entrance and that the hedge effectively screens the site frontage. When viewed from the south it is stated that the access road is not visible due to the 'Shepherds Huts' on the land.

15. On behalf of the appellant it is stated that if the use is found to be inappropriate there are various matters that would amount to the very special circumstances required to overcome the inappropriateness and any other harm caused to the Green Belt. These include the fact that the lawful package sewage treatment plant requires regular servicing and emptying (which includes the use of large vehicles); the fact that New Road is a private road and that there is no inherent right to park vehicles on the road; the fact that visitors to the site could have difficulties with a muddy surface; that the huts have to be removed every 28 days and that gas canister and laundry supply vehicles also need regular access.

16. Finally, it is argued that any visual impact of the planings could be lessened by the use of another surface and it is suggested that planning permission for this alternative could be considered under the ground (a) appeal. Details and photographs of a permeable cellular grid are submitted which indicate that the grass is allowed to grow through the surface whilst protecting the ground below.

17. It is contended that the use of this system would '*complement the countryside location and offer a visual enhancement over and above the use of the planings*'. It is considered that this would serve to meet the aims of the enforcement notice; would provide a sufficiently stable access road and parking area and would address the issues relating to the very special circumstances. It is contended that the type of product could be agreed with the Council, together with a timetable for provision.

The gist of the case for the Council

18. The Council states that the site lies in the open countryside and was originally an open field surrounded by other fields and farmsteads. It is stressed that it contributes to the openness of the Green Belt and that it can be seen from both New Road and Wheldrake Lane to the south. It is argued that the internal road layout

represents an encroachment into the countryside and conflicts with the purposes of the Green Belt, including the purpose '*to assist in safeguarding the countryside from encroachment*'. It is considered that the hardstanding has resulted in a harmful urbanising effect which has eroded the rural character of the area.

19. The Council indicates that the use of the site for the stationing of the 'Shepherds Huts' under part 5 of the GPDO and paragraph 5 of Schedule 1 of the CSCDA 1960 is temporary and that the certificate of usage has to be renewed annually. It is stressed that, now that the surfacing works have been carried out, it is evident that they are not easily reversible and that the huts alone have had a detrimental effect on the openness of the Green Belt, albeit only on a temporary basis.

20. It is contended that the access road works have not preserved the openness of the Green Belt; that the works have resulted in a definite encroachment into the countryside and, therefore that they constitute inappropriate development in this part of the Green Belt.

21. The Council refers back to the fundamental purpose of Green Belt policy being to prevent urban sprawl by keeping land permanently open. It is stressed that the concept of 'openness' in this context means the state of being free from development and relates to the quantum and extent of development, as well as to its physical effect on the site.

22. The Council states that LPAs should ensure that substantial weight is given to any harm to the Green Belt. It also refers to the point that '*very special circumstances*' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Having considered each of the matters outlined on behalf of the appellant as being '*very special circumstances*' the LPA is of the view that these matters do not carry sufficient weight, either singularly or jointly, to overcome the overall identified harm.

23. Turning to the suggestion of an alternative surface being provided, the Council contends that this would be a variation from the existing position and that it does not fall within the remit of S174 of the Act. It is stressed that the alternative proposal is materially different to the unauthorised works carried out. It is stated that if consideration was given to the proposals under this ground (a) appeal, without any further consultation on the matter, it would deprive those who should have been consulted an opportunity to comment. It is considered that this would conflict with the findings of the courts in relation to the '*Wheatcroft*' principle.

24. Furthermore, even if it were to be considered that the proposals could be considered under the ground (a) appeal, it is contended that the cellular system surfacing would still result in the use by vehicles and this would fail to preserve the openness and conflict with purposes of included land within the Green Belt. As such the proposed development would result in harm to the Green Belt. In conclusion the LPA considers that, for the reasons set out above, planning permission should not be granted either for the works as carried out or for the alternative proposals.

My Assessment

25. The main issues are:

- Whether the hardstanding constitutes inappropriate development in the Green Belt for the purposes of the NPPF and development plan policy, with particular reference to whether it preserves its openness and does not conflict with the purposes of allowing land within it.

- the effect on the character and appearance of the area and,
- if the building does represent inappropriate development, 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 within the Green Belt.

Whether the hardstanding constitutes inappropriate development

26. From the submissions and my inspection of the site, I agree that the works carried out amount to 'engineering operations'. In principle this is one of the forms of development within the Green Belt which can be considered to be 'not inappropriate' (paragraph 150 – NPPF). However, this is qualified by the wording 'provided they preserve its openness and do not conflict with the purposes of allowing land within it'. I turn now, therefore to the effect of the works on the openness of the Green Belt and to whether or not they have conflicted with the purposes of allowing land within it.

27. The NPPF states that '*the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of GreenBelts are their openness and their permanence*'.

28. The Court of Appeal in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 (*Turner*) has confirmed that the openness of the Green Belt has a spatial aspect, as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. But equally this does not mean that the openness of the Green Belt has no visual dimension.

29. The Supreme Court in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council* (Appellant) [2020] UKSC3 added to *Turner* to the effect 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.

30. The Supreme Court highlighted that openness is the counterpart of urban sprawl and that it does not imply freedom from any form of development. Furthermore, the visual qualities of the land may be an aspect of the planning judgement in applying this broad policy concept. In conclusion the Supreme Court confirmed that '*the matters relevant to openness in any particular case are a matter of planning judgement, not law*'.

31. Having seen the site and the development as carried out, I do not consider that the openness of the Green Belt in this particular location has been preserved. Even though the hardstanding cannot be compared to a large three-dimensional built form, it nevertheless has a physical impact upon the land. What was initially an open field now has an engineered surface finish which is clearly visible and which contrasts markedly with the natural physical nature of the surrounding fields. It may not necessarily be totally visible from outside of the site but it is 'development' which is clearly noticeable and has a physical dimension.

32. The effect on the openness in this case is not confined to the physical works carried out. The parking of vehicles on the land and the use of the access road by visitors' and other vehicles will also have resulted in openness not being preserved thus having a negative impact on this part of the Green Belt. In my view, the works as carried out have clearly resulted in a greater impact on the openness of the Green Belt than the existing use of the field.

33. The physical works, together with the resultant parking of vehicles on the hardstanding and access road areas, have resulted in an encroachment into this part of the open countryside. Having applied the tests set out in the NPPF, I conclude that the works as carried out have amounted to inappropriate development which is, by definition, harmful to the Green Belt.

The effect on the character and appearance of this part of the open countryside

34. During my visit I was able to view the site and the works from both near and distant viewpoints. Visually I found the overall development to be out of character with the surrounding countryside. Whilst accepting that the 'Shepherds Huts' themselves have a certificate of compliance, this use is only temporary and the use is restricted in accordance with the GPDO. I accept that this temporary use is typical of a small caravan or camping facility in the countryside and that the temporary huts are not so significantly visually harmful in themselves.

35. However, when seen in conjunction with the physical layout and nature of the hardstanding I find the overall development to be visually harmful to the character and appearance of this part of the countryside.

Whether or not there are very special circumstances

36. I have concluded above that the 'engineering operations' carried out constitute inappropriate development in the Green Belt in that it is harmful to openness and encroaches into the countryside. I have also found the works to be visually harmful in this location to the character and appearance of the area.

37. Having considered the matters which are set out by the appellant to constitute the very special circumstances required to overcome this identified harm, I disagree with that view. All of the circumstances, apart from the access to the sewage treatment works, are put forward on the basis that the hardstanding and access road are required in order to efficiently service the 'Shepherds Huts'. However, this use of the land is temporary as indicated above.

38. I do not consider, therefore that the circumstances set out carry sufficient weight to overcome the harm by definition and the other harm that has been caused to this part of the Green Belt. It follows that the 'very special circumstances', required to justify the development as carried out, do not exist.

The Alternative proposal and other matters

39. I have noted the suggested alternative proposal to the works as carried out. However, in a ground (a) appeal, when considering whether or not to grant planning permission, this can only normally relate to what is set out in the alleged breach of planning control. I agree, therefore, with the LPA that this variation cannot fall within the remit of Ground (a) as set out in Section 174 of the Town and Country Planning Act (1990).

40. I also agree with the LPA that, even if the alternative scheme could be considered, it is materially different to the existing 'engineering works' as carried out. I consider that the proposed alternative would be significantly different to such an extent that, if permission was to be granted under ground (a) without any further consultation on the changes, it would lead to injustice in depriving those who should have been consulted an opportunity to do so. This would be contrary to the 'Wheatcroft' principles (*Bernard Wheatcroft v SSE 1982*).

41. In reaching my conclusion I have taken into account all of the other matters raised by the parties. These include the full planning history; references to the

enforcement notice; the photographic evidence and the full policy context. However, none of these carries sufficient weight to alter my conclusions on the main issues and nor is any other matter of such significance so as to alter my decision.

Conclusion

42. The appeal site is located within the general extent of the York Green Belt and serves at least one of the Green Belt purposes. Having considered the development, as carried out, I consider that it is contrary to the relevant development plan policies, as well as to the policies for the Green Belt as set out in the NPPF. I find that the development, is by definition, harmful to the Green Belt, that there is harm to openness and to the character and appearance of the open countryside. I do not consider that the countervailing benefits claimed as arising from the proposal clearly outweigh the harm identified, so as to amount to the very special circumstances necessary to justify an exception to Green Belt policy.

43. The appeal must fail therefore on ground (a) and the appeal is dismissed.

Formal Decision

44. 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 Act.

Anthony J Wharton

Inspector.