



Appeal Decisions

Site visit made on 1 November 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/H1515/C/20/3264545 & 3264754 (Appeal A)
Hunts Farm, Old Church Lane, Mountnessing, Brentwood, Essex, CM13 1UR

- 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 & Mrs Simon and Hayley Richardson against an enforcement notice issued by Brentwood Borough Council.
- The enforcement notice was issued on 10 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission:
 - 1) The unauthorised creation of a residential annexe/dwelling and
 - 2) The material change of use of land for the creation of:
 - a. Builders yard with associated buildings;
 - b. The stationing of storage containers;
 - c. The stationing and storage of motor vehicles;
 - d. The creation of hardstanding within an agricultural setting;as shown for the purposes of identification only in the approximate positions annotated by colour and lettering on the attached site plan.
- The requirements of the notice are:
 - 1) Permanently cease the human habitation of the unauthorised annexe/dwelling etched in Green on the attached plan Marked "A".
 - 2) Permanently remove from the land, to the satisfaction of the Local Planning Authority (LPA), the unauthorised residential annexe/dwelling etched in Green on the attached plan Marked "A".
 - 3) Permanently cease the unauthorised use of the builders yard and remove from the land, to the satisfaction of the LPA, all buildings, structures, fencing and gates, within the area etched in Pink on the attached plan Marked "B".
 - 4) Permanently remove from the land, to the satisfaction of the LPA, all building materials, plant machinery and tools stored, used and kept therein, within the area etched in Pink on the attached plan Marked "B".
 - 5) Permanently remove from the land, to the satisfaction of the LPA, all storage containers, buildings, structures and contents, including all motor vehicles, within the area etched in Orange Marked "C" on the attached plan.
 - 6) Permanently remove from the land and cease the storage of all motor vehicles, caravans and building materials including waste building materials within the area etched in Yellow on the attached plan Marked "D", to the satisfaction of the LPA.
 - 7) Permanently remove from the land and cease the storage of all motor vehicles within the area etched in Purple on the attached plan Marked "E", to the satisfaction of the LPA.
 - 8) Permanently cease all unauthorised commercial use of the land, to the western side of the site in the area etched in Blue on the attached plan Marked "F", to the satisfaction of the LPA.
 - 9) Permanently remove from the land all hardstanding to the satisfaction of the LPA within the area etched in Blue on the attached plan Marked "F" and return to grassed area.

- The period for compliance with Requirement 1 and Requirements 3-9 is three months from the date this notice takes effect. Compliance with Requirement 2 is four months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b),(c),(f) and (g).
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Appeal Ref: APP/H1515/W/20/3262353 (Appeal B)
Hunts Farm, Old Church Lane, Mountnessing, Essex CM13 1UR

- The appeal is made under section 78 of the Town and Country Planning Act 1990
 - The appeal is made by Mr & Mrs Richardson against the decision of Brentwood Borough Council.
 - The application ref. 20/00954/FUL, dated 3 July 2020, was refused by notice dated 7 September 2020.
 - The development proposed is described on the application form as '*Removal of existing 2 bedroomed caravan with the benefit of lawful use and the retention of existing one bedroomed residential annexe to the main residence.*'
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Summary of Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld with corrections and variation, as set out in the Formal decision.

Appeal B

2. The appeal is allowed and planning permission is granted, subject to the condition set out in the Formal decision

Preliminary Matters

3. The land, which in its entirety covers a much wider area than that section which the enforcement notice is concerned with, was formerly in use wholly for agricultural purposes. The Council has provided photographs from October 2020 showing that pigs were kept on the land, but the pig rearing business has apparently been discontinued.
4. A former agricultural barn, the largest building on the site, has been converted for residential use and enjoys immunity from enforcement action.
5. During the past ten years, aerial photographic evidence indicates that an area of land to the west of the site has been put to other uses including associated facilitative development for which the Council considers planning permission is required. This includes a builders yard with associated storage which is targeted by Requirements 3 and 4 of the enforcement notice. Relating to the commercial storage use, during the appeal process the ground (a) appeal as initially lodged, which would have been a deemed planning application, was withdrawn by the appellants.
6. The enforcement notice, in its Requirements 1 and 2, targets the building known as the 'residential annexe'. This building, formerly used as a pole barn, was the subject of an unsuccessful appeal in 2019 following the Council's decision to refuse planning permission for its retention. In the current s174 appeal a claim was initially lodged claiming the building's immunity from enforcement action, but this was later withdrawn. Although the appellants

have only made representations on the grounds (f) and (g) appeals the building is also the subject of the s78 appeal (Appeal B) where its retention is once again proposed, but now with the appellant's assurance that a mobile home situated close by - and which, since 2011, has enjoyed use rights for residential purposes - be removed from the land. The mobile home was previously occupied by the farm manager although at the time of my site visit it had been vacated.

7. The main dwelling, converted for residential use, was granted lawful use rights in April 2020. Accordingly, as mentioned, and in common with the said mobile home, this building and its use is effectively immune from enforcement action.

Matters concerning the enforcement notice

8. The Council, for the purposes of the notice, has sub-divided a section of the land to the west of the site into a series of identifiable compounds. As a result, within the stated allegation, the enforcement notice targets the stationing of metal storage containers, the storage of motor vehicles and the creation of an area of hardstanding, in addition to the builders storage yard. However, whilst the majority of the compliance requirements are by and large clear, Requirement 8 which states "*Permanently cease all unauthorised commercial use of the land*" is vague and bears no obvious direct relationship to the allegation. In the circumstances, I am deleting this particular requirement and, in the interests of brevity, I will consolidate the number of remaining requirements.
9. From my site visit observations the compounds, which the Council has labelled with individual letters, save for the gated and fenced area which I noted was used for the storage of building materials and contains associated structures (Area 'B'), the remaining areas 'C', 'D', 'E' and 'F' are not physically demarcated but are, for the main part, singularly definable and I shall refer to these areas, accordingly, in the corrections I shall make to the notice.
10. I consider that the concept of the planning unit is relevant and I must here refer to the leading case in the determination of such; that of *Burdle & Williams v SSE & New Forest DC* [1972] which confirmed that an Inspector may correct or vary an enforcement notice under s176 of the 1990 Act to ensure it was directed to the correct planning unit.
11. From Old Church Lane the site has evolved to now exhibit a threshold in the form of a gated, lengthy domestic style, shingled driveway. The timber-framed dwelling is situated directly ahead at the end of this linear driveway. With a lawned area to the side of the driveway the site at this point has a distinctly residential feel. The area to the rear of the dwelling, beyond which are open fields which extend across the southern part of the site, shows a scattering of former agricultural buildings and also the mobile home I have referred to. To the west of the main dwelling is an extensive area of hardstanding used for parking, beyond which are the areas B-F, as annotated on the enforcement notice.
12. Although a lawful residential use has been introduced the primary use of the land remains as that of agriculture. Despite the agricultural use having been scaled back, or even discontinued, it can lawfully recommence at any time as agriculture is not development for the purposes of planning legislation.

13. In *Stone & Stone v SSCLG & Cornwall Council* [2014] EWHC 1456 (Admin), the Court held that whether or not an occupier of land has created a new planning unit is a question of fact and degree for the decision-maker
14. In the circumstances I have identified that the appeal site is a single planning unit, as has the Council, that is in a mixed use which is being put to two or more activities and where it is not possible to say that one is incidental to another. This particular arrangement is one of the three instances identified in the *Burdle* judgement.
15. Accordingly, I consider that the alleged breaches should best be described as:
 - 1) the creation of a residential annexe/dwelling; and
 - 2) the material change in the use of the land to a mixed use involving agriculture, residential and also commercial purposes encompassing the storage of builders materials, along with the stationing of storage containers and the storage of motor vehicles unrelated to the residential use of the land, and also the creation of hardstanding to facilitate the commercial elements.
16. I shall deal with the corresponding corrections in the Formal Decision set out later in this decision letter.

Appeal A

The appeal on ground (b)

17. An appeal under ground (b) is the claim that the alleged breaches have not occurred as a matter of fact.
18. In terms of the alleged material change of use of the land the enforcement notice identifies four specific breaches of planning control. The appellants take issue only with one of the allegations, that cited as 'The creation of hardstanding within an agricultural setting'. However, whilst the appellants discuss the various areas of hardstanding in this section of the appeal site, the notice only targets that pocket within Area 'F'. With reference to the existing hardstanding outside Area 'F' under the provisions of s173(11) of the 1990 Act (as amended) it is indicated that, where and when the other requirements of the enforcement notice have been complied with, planning permission will be deemed to have been granted for such.
19. The appellants also comment that certain areas be excluded from any enforcement action and excluded from the plan attached to the notice. It is not clear to me from the appellants' text exactly what point is being made here, although I did observe on my site visit that Areas 'E' and 'F' have been largely cleared of any external storage. However, this is irrelevant as the critical issue in such instances is whether the alleged breach or breaches were taking place on the date the enforcement notice was issued. No compelling case has been put forward to suggest otherwise and the ground (d) appeal claiming immunity from enforcement action has also been withdrawn.
20. Accordingly, the appeal on ground (b) does not succeed.

The appeal on ground (c)

21. A ground (c) appeal, whilst accepting that the alleged breaches have occurred, claims that no planning permission is required for either the use(s) lawful continuation or the retention of any associated operational development. This would be the cases in instances where planning permission has already been granted or is satisfied by the permitted development entitlement in the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).
22. Firstly, as mentioned, and with reference to the appellants' comments on the various pockets of hardstanding, only one piece of hardstanding is being targeted; that within Area 'F' where, from aerial photographic evidence, it is suggested that this pocket does not enjoy immunity from enforcement action.
23. In respect of the builders storage yard the appellants, in their Statement, suggest that the associated buildings/structures are not related to the breach. The judgement of *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598 established the principle that where operational development is part and parcel of the material change of use then the four year bar will not apply, and the works would be subject to the ten year enforcement limit. This judgement is reflected in the ruling of *Somak Travel Ltd v SSE & Brent LBC* [1988] where it was held to be lawful for an enforcement notice to require for the removal of operational development integral to an unauthorised use of the land.
24. Accordingly, an unauthorised material change of use may lawfully require the land in question to be restored to its condition before the change of use took place by the removal of associated structures and works as well as cessation of the use itself. In such instances where operational development facilitates an unauthorised use the notice is correct in requiring for this to be demolished and removed from the land.
25. The appeal on ground (c) therefore fails.

The appeal on ground (f)

26. An appeal under ground (f) is that the steps for compliance, as required by the notice, go beyond what is necessary to remedy the harm identified by the Council.
27. The enforcement notice, in this instance, has been issued to remedy the breach of control rather than remedying any injury to amenity. Accordingly, there is no under-enforcement of the planning position at the site.
28. The appellants say that Area 'B' provides for a secure storage area for materials, plant and equipment used at the farm, and could be used in the future for the storage of plant and equipment used at the farm. However, the enforcement notice is requiring for the enclosed compound itself to be removed as it adversely impacts on the openness of the Green Belt, a matter to which I am in agreement.
29. Notwithstanding the provisions of s173(11) it would nonetheless appear from aerial photographic evidence that, save for the hardstanding laid in Area 'F', the remaining pockets of hardstanding throughout the identified Areas 'B', 'C', 'D' and 'E', enjoy immunity from enforcement action. Consistent with this, the notice only targets Area 'F' on this matter.

30. All the storage uses covered by the enforcement notice represent inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework). The unauthorised development adversely impacts on the Green Belt's openness and is also contrary to the aims and requirements of policy MG02 of the Brentwood Local Plan 2016-2033.
31. Accordingly, I conclude that the stipulated requirements to remedy the breach do not go beyond what is necessary to remedy the harm occurring and are fully reasonable in the circumstances.
32. The appeal on ground (f) must therefore fail.

The appeal on ground (g)

33. An appeal under ground (g) is that the stipulated time periods for compliance are unreasonably short.
34. The enforcement notice requires that all the required steps relating to the unauthorised storage uses have compliance periods of three months from the date the notice takes effect. The appellants mention the difficulties of finding alternative accommodation due to the consequential displacement, and I sympathise with the request for a longer period of time.
35. The appellants have requested that for the vehicles stored on the land the period should be increased to nine months and, in support of such, refer to lockdown restrictions being eased. Clearly, things have long since moved on and I shall not make an exception in this regard.
36. Accordingly, I am prepared to extend the compliance period to six months for all requirements. The appeal succeeds to that extent only.

Conclusions

37. In summary, the matters alleged in the enforcement notice had occurred as a matter of fact at the time the notice was issued, planning permission was necessary for lawful continuation and retention purposes, and the extent of the measures required by the notice were all reasonably necessary to remedy the breaches of control occurring.
38. For the reasons given I conclude that, apart from the variation agreed to extend the periods for compliance to six months, the appeals should not succeed. I shall uphold the enforcement notice with corrections and incorporate the said variation.

Appeal B

39. During the appeal process, in March 2022, the Council adopted a new development plan. The Brentwood Local Plan 2016-2033 supersedes the Brentwood Replacement Local Plan (August 2015) and its policies which both main parties have referred to in the appeal papers no longer hold effect. In the circumstances the parties were requested to comment as to specifically which of the policies from the new development plan are most relevant to this appeal. Both agreed that these are policy MG02 'Green Belt', which reflects the guidance in the Framework, and also policy BE14 'Creating Successful Places', which requires that development is of a high standard of design.

Main Issues

40. Given the site's location in the Metropolitan Green Belt, these concern:

- 1) Whether the said development is 'inappropriate development' within the Green Belt and, if so, the effect on its openness;
- 2) any other resultant harm; 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

41. The building is a former timber pole barn which has been converted and part reconstructed into a residential annexe and store. The store part remains single-storey whereas the residential annexe section has been heightened with the creation of an overlying pitched gable roof and the erection of a porch feature. At ground floor level is a lounge, kitchen and shower room, with a bedroom above set within the roofspace.
42. This former agricultural building is many years old, but has undergone alteration and extension to facilitate its habitable use for residential purposes by the appellants' family.
43. The Framework says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the document says that substantial weight is given to any harm to the Green Belt and that 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.
44. Paragraph 150 goes on to say that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. One of these limited exceptions – and that which is most applicable in my view – is the re-use of buildings providing they are of permanent and substantial construction.
45. Agricultural buildings are seen to go hand-in-hand with the use of agricultural land and the concept of inappropriateness does not apply to such. However, the building at issue here no longer serves an agricultural purpose having been converted, and significantly extended, to facilitate a residential use. I must therefore conclude that the said building represents inappropriate development within the Green Belt for the purposes of the Framework. My findings to this extent are consistent with those of the Inspector who dismissed the 2019 appeal where the building's retention was previously sought.
46. The Inspector, at this time was also dealing with a second appeal; that relating to the retention of the main dwelling. In dismissing that appeal she referred to changing from a one-bed mobile home to a two-bedroom house having an intensification of domestic activity of the site, affecting the openness of the

Green Belt. In this regard the previous Inspector also stated in paragraph 13 of her decision letter:

"It has been suggested that if planning permission were granted a condition could be imposed to require the demolition of the mobile home. I consider that this condition could meet the relevant tests and therefore the appeal is considered on that basis....the replacement of a one-bedroom mobile home with a one-bedroom annexe building would generate a similar amount of domestic activity."

47. The previous Inspector refers to the mobile home being a one-bed unit whereas it appears that, instead, it accommodates two bedrooms. Given the circumstances I have identified I am satisfied that the factors involved in the current appeal are subtly different. As mentioned, subsequent to the Inspector's decision, the main dwelling had its lawfulness formally confirmed.

Other considerations

48. No other harm such as design matters arising from the alterations carried out to the building have been identified by the Council, and I agree with this approach. Accordingly, I find no material conflict with policy BE14 of the newly adopted development plan.

Planning Balance

49. The crux of the matter in this particular instance is whether there are very special circumstances to outweigh the inappropriateness or presumption against residential development in the Green Belt. Given the intended removal of the two-bed mobile home, which can be the subject of a retrospectively worded condition, I consider that the impact of allowing the one-bed residential annexe would not have a significant effect on the Green Belt's openness.
50. Here, I take a different view to the previous Inspector who was concerned with the possibility of domestic paraphernalia being placed externally, but this must be realistically offset against what is effectively the removal of a small house from the land. This, quite reasonably, would represent an improvement in that a randomly placed and significantly sized building, which no longer serves any functional purpose, would be taken from the land.
51. Although not directly related I am also mindful of the outcome of Appeal A and the improvement to the Green Belt's openness which will result from the removal of the unauthorised development on the wider site.
52. I find that the extended building satisfactorily integrates into its surroundings and, on balance, given the particular circumstances and the contextual setting, I consider that any impact on the openness of the Green Belt is minimised.
53. In conclusion therefore I am satisfied, in terms of this individual proposal, that the very special circumstances necessary to justify the development here do exist and no other harm results from the development. The development is consistent with the Framework's guidance and does not materially conflict with the objectives of policy MG02 of the development plan.
54. Given that the conversion and use of the building has already occurred it is not necessary for me to impose a condition requiring that the development be in accordance with submitted drawings nos. 2475/B and 2475/3 Rev B.

Nonetheless, any future material changes carried out to the building would likely require the benefit of planning permission.

Conclusion

55. The appeal succeeds and planning permission is granted subject to a retrospectively worded condition to ensure the intended removal of the mobile home.

Formal Decisions

Appeal A

56. It is directed that the enforcement notice be corrected by deleting, in its entirety, the wording within its Section 3, and the breach of planning control specified instead as:

- 1) the creation of a residential annexe/dwelling; and
- 2) the material change in the use of the land to a mixed use involving agriculture, residential and also commercial purposes encompassing the storage of builders materials, along with the stationing of storage containers and the storage of motor vehicles unrelated to the residential use of the land, and also the creation of hardstanding to facilitate the commercial elements.

57. Section 5 of the notice is also deleted in its entirety and shall instead read:

- 1) Within Area 'B' on the attached plan, cessation of the use of the land as a builder's storage yard, removal from the land of all builders materials, associated plant, machinery and equipment, and also the removal from the land of all associated buildings and structures facilitating the said use;
- 2) Within Area 'C' on the attached plan, removal from the land of the various metal storage containers;
- 3) Within Areas 'C', 'D' and 'E' on the attached plan, cessation of the use of the land for the storage of motor vehicles unrelated to the lawful uses of the land; and
- 4) Within Area 'F' on the attached plan, break up and remove from the land the hardstanding laid, and the land returned to its former condition.

58. The period of compliance for all four of the above steps is varied to six months.

59. The appeal is dismissed and, subject to the above corrections and variation, the enforcement notice is upheld.

Appeal B

60. The appeal is allowed and planning permission is granted for the removal of an existing 2 bedroomed caravan with the benefit of lawful use and the retention of an existing one bedroomed residential annexe to the main residence at Hunts Farm, Old Church Lane, Mountnessing, Essex CM13 1UR, subject to the following condition:

- 1) If within three months of the date of this decision the mobile home/caravan referred to in the planning application has not been removed from the land

the residential use of the annexe shall immediately cease and the building vacated, accordingly.

Timothy C King

INSPECTOR