



Appeal Decision

Site visit made on 7 March 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 02 May 2023

Appeal Ref: APP/P1805/C/20/3264661

Land to the East of Bromsgrove Road, Romsley, Worcestershire B62 0EU

- 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 Aaron Anslow against an enforcement notice issued by Bromsgrove District Council.
- The enforcement notice was issued on 6 November 2020.
- The breach of planning control as alleged in the notice is:
 - a. Without planning permission, the carrying out of a material change of use of the Land from agricultural use to a mixed use comprising agriculture and the use of land for the stationing of a twin unit caravan in the location marked 'A' and a steel shipping container in the position marked 'B' and storage of steel framework to be used in construction of a polytunnel in the position marked 'C'
 - b. Without planning permission, the carrying out of operational development on the Land consisting of the material alteration comprising the widening of a vehicular access onto a classified road, in association with the mixed use identified at a. above in the location marked by 'D' on the Plan
 - c. Without planning permission, the carrying out of operational development on the Land consisting of the creation of a driveway and hardstanding in the location shown shaded green on the Plan in association with the mixed use identified at a. above.
 - d. Without planning permission, the installation of a septic tank in association with the use described at a. above in the location marked by 'E' on the Plan and the erection of a stable block in the location marked 'F'.
 - e. Without planning permission, the erection of a fence in association with the use described at a. above running from points 'X' to 'Y' on the Plan. together "the unauthorised development".
- The requirements of the notice are:
 - a. Remove the caravan, septic tank and associated pipework from the Land
 - b. Remove the driveway and hardstanding from the Land
 - c. Reinstate the field gate and adjacent southern section of fence to its former position
 - d. Reduce the area of hardstanding between the gate and dropped kerb to its former extent as shown in the extracts from google street view dated Jun 2019 and Sep 2012 reproduced at Appendix 3, such that the area of hardstanding covers only the area between the gate posts and outer edge of the dropped kerbs either side of the access.
 - e. Remove from the Land all resulting materials from compliance with 5.a, b and d. above
 - f. Remove the polytunnel framework from the Land
 - g. Remove the steel shipping container and stable
 - h. Remove the row of conifers planted along the northern boundary
 - i. Remove the fence erected along the northern boundary
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (b)

1. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. This ground applies where the appellant considers that what is alleged by the Notice has not in fact happened. In this case the appellant's appeal on ground (b) is restricted to the alleged material change in use of the land to a mixed use comprising agriculture and the use of land for the stationing of a twin unit caravan and a steel shipping container and the erection of a stable block.
2. The appellant contends that the use of the land remains agricultural and the twin unit caravan replaced a caravan that was on site for many years and therefore gained immunity from planning control through the passage of time. Furthermore, the twin unit caravan is allegedly used for welfare purposes and is ancillary to the agricultural use of the land. Case law¹ has established that the stationing of a caravan is not a material change of use itself, but in determining this it is necessary to identify the purpose for which the caravan is sited. In this case, if the twin unit caravan is sited for a purpose that is ancillary to use as agriculture, no development is involved.
3. The allegation the subject of the enforcement notice refers specifically to the carrying out of a material change of use of the Land to a mixed use comprising agriculture and the use of land for the stationing of a twin unit caravan and a steel shipping container and the storage of steel framework. There is no dispute regarding the steel shipping container and the steel framework and it is also clear to me that as a matter of fact the land is used for a mixed use comprising agriculture and the stationing of a twin unit caravan.
4. In my judgement, the twin unit caravan exceeds what is reasonable to be used as a welfare unit given the relatively small size of the smallholding in question. There are facilities within the caravan that are associated with permanent residential use rather than for ancillary welfare purposes, including furniture such as sofas, dining room table and chairs, fully fitted kitchen, bathroom and two separate bedrooms, including one with en-suite bathroom. Consequently, I reject the appellant's argument that the twin unit caravan is for purposes ancillary to agriculture, but rather the stationing of the unit constitutes development itself as part of a wider mixed use. I have taken account of the appellant's point that the unit was chosen because it has wide double doors which allow wheelchair access, but that does not account for the overall scale of the caravan and its suitability for welfare purposes as opposed to residential use.
5. With respect to the stable block, the appellant argues that it has not been erected, but it is clearly sited on the land and it is argued that it could be moved around the site and is not plumbed into a water supply or connected to electricity. There is insufficient evidence that it was brought onto site in one piece. Therefore, as a matter of fact it has been erected on the land and is used in association with the alleged unauthorised mixed use of the site.
6. Finally, it is clear to me that the shipping container has been stationed on the land as a matter of fact. As such it comprises part of the mixed use alleged.

¹ Wealden DC v SSE & Day [1988] JPL 268

7. The appeal on ground (b) does not succeed.

The appeal on ground (c)

8. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The appellant's case under ground (c) is restricted to the erection of a fence associated with the use alleged in the Notice. He contends that the fence was erected under permitted development granted by virtue of Part 2, Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
9. However, that cannot be the case because, as stated in Section 3 paragraph (5)(b) of the GPDO, permission granted by Schedule 2 does not apply in the case of permission granted in connection with an existing use, if that use is unauthorised. I have found that the alleged breach of planning control has occurred as a matter of fact and since there is no appeal on ground (c) with respect to the remaining unauthorised development, I must conclude that the fence that has been erected has been so in connection with an existing unauthorised use. Consequently, the appeal on ground (c) cannot succeed.

The appeal on ground (d)

10. The ground of appeal is that at the date when the Notice was issued, no enforcement action could be taken. For this legal ground, the Courts have established that the onus of proof falls on the appellant and the test of evidence is on the balance of probabilities. In addition, the appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
11. The appellant has submitted evidence in support of his appeal on ground (d) in the form of a statutory declaration concerning the state of the land when he purchased it in November 2019 and a letter from a relative of a former owner of the land.
12. The affidavit confirms that there was an access onto Bromsgrove Road at the time the appellant purchased the land but that it had not been used by vehicles for some time and required clearance before it could be used for vehicular purposes. That may be the case but the allegation in the Notice is not that a vehicular access has been created but that there has been a material alteration comprising the widening of a vehicular access onto a classified road. The evidence before me falls short of addressing that specific breach.
13. Both the affidavit and letter state that the use of the land prior to the appellant's purchase was horticulture. Again, it may be that the site has historically been used for horticulture, growing crops and associated activities, but the allegation in the Notice is that the use has changed to a use comprising agriculture and the use of the land for the stationing of a twin unit caravan and a shipping container and storage of steel framework to be used in construction of a polytunnel. The evidence submitted pursuant to the appeal on ground (d) does not address this specific alleged breach of planning control and falls short of showing that the alleged change of use is immune from planning control through the passage of time.

14. The affidavit also states that prior to purchasing the land there was a caravan on site along with a shed and a tractor. It is contended that these were used in connection with horticulture. This is supported in part by the letter which confirms that for a period of time there was a small caravan in the corner of the site which was used for shelter, a potting shed and a tractor. However, this also falls short of being clear and unambiguous evidence of the alleged material change of use and operational development alleged in the Notice.
15. Consequently, in the absence of clear and unambiguous evidence with respect to the specific alleged breaches of planning control, the appeal on ground (d) cannot succeed,

The appeal on ground (a)

16. The ground of appeal is that planning permission should be granted. The main issues are:
- i. Whether the proposal would be inappropriate development for the purposes of the development plan and the National Planning Policy Framework (the Framework);
 - ii. The effect of the proposal on the openness of the Green Belt and the character and appearance of the area; and
 - iii. If the proposal would be 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 it.

Inappropriate development in the Green Belt and Openness

17. The appellant contends that once it is accepted that the use of the land remains as agricultural, the Green Belt objections fall away. However, I have rejected his case under ground (b) and have concluded that the development alleged in the Notice has occurred as a matter of fact and that it does in fact constitute a breach of planning control. As such, the Green Belt argument needs to be addressed.
18. In considering whether the development is inappropriate development in the Green Belt I have taken account of policies in the development plan and the Framework. Paragraph 150 of the Framework states 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. These include material changes in the use of land. Therefore, changes of use are not inappropriate development if the development in question preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
19. As I have stated above, the twin unit caravan exceeds what is reasonable to operate as a welfare or rest facility in association with the small holding and there are facilities in the caravan which are commensurate with permanent residential use for which a need has not been demonstrated. I accept that under the First Schedule to the Caravan Sites and Control of Development Act 1960 a site licence shall not be required for the use of agricultural land as a caravan site to accommodate during a particular season a person or persons employed in farming operations on land in the same occupation. However, a

caravan cannot remain on the land outside the specific season for which it is required without the benefit of planning permission and, furthermore, it is clear that a season cannot last for the period of a year.

20. The twin unit caravan that has been placed on the land in this case is not commensurate with seasonal occupancy. In addition, the argument that this particular unit was chosen for accessibility reasons does not justify its overall scale. The siting of the mobile home where none of this scale existed previously has a negative effect on the openness of the Green Belt. Therefore, and in respect of the twin unit caravan, the development is inappropriate development in the Green Belt.
21. In addition, there is undoubtedly an impact on openness of the other physical elements associated with the material change; namely, the steel shipping container and steel framework. Therefore, these aspects of the development are also inappropriate within the Green Belt.
22. A fundamental aim of the Green Belt is to keep land permanently open and in this case the openness of the Green Belt is very evident in and around the site and in the general vicinity with there being open views of the surrounding countryside to the north and east in particular. Certain elements of the unauthorised operational development that has taken place; namely the stable block, shipping container, septic tank, driveway and hardstanding are partly screened by existing hedges, but in my judgement, there is undoubtedly a demonstrable physical and spatial impact openness. This is a consequence of their physical presence where previously there was none. As such there is a loss of openness and a harmful effect on the purpose of the land being within the Green Belt of safeguarding the countryside from encroachment.
23. Therefore, since the openness of the Green Belt would not be preserved and the development represents inappropriate development encroachment into the countryside the change of use of the land and the provision of the various structures and facilities for the operation of the smallholding are inappropriate development. The Framework confirms that inappropriate development is, by definition harmful to the Green Belt and as such the development conflicts with Policies BDP 4 and BDP 15 of the Bromsgrove District Plan (2011 – 2030) Adopted January 2017 (the LP) and the Framework.

Character and appearance

24. The twin caravan unit, in terms of its overall scale and relatively elevated position within the site, together with the hard surfaced driveway which has been engineered into the natural slope of the site, are particularly visually intrusive features within the landscape. The other features are not overly intrusive as individual items, but together they create a site which contrasts with its surroundings and is incongruous within its wider landscape setting. The development is visually discordant when seen from the adjacent highway and cause demonstrable harm to the character and appearance of the area. Therefore, although the site is not designated for any particular landscape quality, there is conflict with Policies BDP 1 and BDP 19 of the DP.

Other Considerations

25. Paragraph 148 of the Framework states that when considering any application, it should be ensured that substantial weight is given to any harm to the Green

Belt and inappropriate development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.

26. No clear arguments have been advanced in support of demonstrating that very special circumstances exist in this case. I have considered the appellant's suggestion that suitably worded conditions could be imposed on the grant of any planning permission for the development to ensure a satisfactory standard of development. However, because the overall principle of the development is not acceptable in the light of the development plan, the Framework and other material considerations, that cannot be overcome through the imposition of conditions that may cover matters such as landscaping, drainage and floodlighting.
27. I have also taken account to the fact that there is no suggestion that the land is contaminated or contains archaeological remains. However, at best I consider these to be neutral factors in the overall planning balance. As such they are insufficient to outweigh the overall harm I have found.
28. The appeal on ground (a) does not succeed.

The appeal on ground (f)

29. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
30. Since the Notice requires the removal of the caravan, septic tank, and associated pipework, removal of the driveway and hardstanding, reinstatement of the field gate and adjacent southern section of fence to its former position, reduction in the area of hardstanding between the gate and dropped kerb to its former extent, removal of all resulting materials, removal of the polytunnel framework, removal of the steel shipping container and stable, removal of the row of conifers planted along the northern boundary and removal of the fence erected along the northern boundary, the clear purpose is to remedy the breach. Leaving any part of the development in place would not achieve that purpose. In this respect, the appeal on ground (f) must fail.
31. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in the appeal it would be possible to grant permission for part of the development. The appellant states that the appeal on ground (f) relates to all aspects of the development and has made specific representations with respect to the septic tank, row of conifers, the reinstatement of the field gate and adjacent southern section of the fence to its former position and the removal of the polytunnel framework. My determination of the appeal on ground (f) is restricted to these elements of the development.
32. I have concluded above, under ground (a) that the septic tank, which is partly located above ground, has a demonstrable physical and spatial impact on openness of the Green Belt and should not be granted planning permission. Therefore, in the current circumstances and given the overall purpose of the Notice, it should be removed from the land.

33. The appellant argues that the removal of the conifer hedge is excessive because planting is not an act of development. However, the purpose of the Notice is to remedy the breach of planning control to reinstate the land to its condition before the alleged breach of planning control took place. The planting of the conifers along with the erection of the adjacent fence are works that were integral to the making of the material change of use of the Land as alleged in the Notice by separating the site from the adjoining field. Therefore, in order to restore the land to its former condition it is entirely reasonable for the Council to require its removal.
34. With respect to the polytunnel, the contention in the Notice is that it has been stored on the land. Therefore, irrespective of whether or not it could be assembled to form a building or otherwise, its removal is a suitable requirement in order to cease its storage and the wider mixed use of the land.
35. Finally, widening the vehicular access onto a classified road is an act of development even though there may have been a vehicular access in place, originally. I have taken account of the appellant's comment that the field access shown in the Council's photographs is not the one on the appeal site, but that does not provide me with an alternative lesser step under ground (f). The requirement to reinstate the field gate and associated fence and implement other works necessary to remedy the breach are reasonable in these circumstances and any alternative would fail to achieve the purpose of the Notice.
36. Therefore the appeal on ground (f) does not succeed.

The appeal on ground (g)

37. The ground of appeal is that the period specified in the notice falls short of what should be reasonably allowed. The two calendar months would be sufficient to carry out the physical requirements of the Notice. The 12 month compliance period suggested by the appellant would be excessive having regard to the ongoing harm caused by the development. In addition, as far as I can see there are no animal welfare considerations in this case as at my site visit there were no animals on the land.
38. Therefore, the appeal on ground (g) does not succeed.

Formal decision

39. 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.

A A Phillips

INSPECTOR