



Appeal Decision

Site visit made on 30 May 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th MAY 2023

Appeal Ref: APP/Z4718/C/22/3307719

**Land on the northeast side of Cockley Hill Lane, Huddersfield, HD5 0HH
(the "site" edged red on the attached plan)**

- 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 Douglas Allen against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 8 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the site to storage, including the storage of timber pallets, stone, plastic storage boxes, the erection of a sectional building (following excavation of the land) and the siting of a shipping container in order to facilitate the storage use.
 - The requirements of the notice are a) cease the use of the site for storage; b) remove from the site all stored materials; c) demolish and remove the section building, including foundations and base; d) following step c) above, back fill the area excavated to accommodate the sectional building with the excavated material stored on the site; e) remove the shipping container from the site; f) remove all debris, rubble and materials arising from taking the above steps from the land, and g) return the land to its condition prior to the breach taking place.
 - The period for compliance with the requirements is a) to f) – 60 days and g) – 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decision

1. 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.

The Notice

2. The appellant raises concern that the notice site address includes a postcode. I accept that the appeal site is a field and that it is very unlikely that it therefore has a postcode. Nonetheless, the postcode relates to Cockley Hill Lane rather than to the appeal site itself. The postcode has been included as a means of assisting in identifying and locating the site to *'the northeast side of Cockley Hill Lane'*. In any event, the notice refers specifically to *'the "site" edged red on the attached plan'*. The appellant does not dispute that the breach of planning control relates to this land. In this regard, I am satisfied that the notice suitably identifies the land to which the breach of planning control relates. Hence, the notice is not invalid or null as the appellant has not been misled and it properly identifies the boundaries of the land.

Ground (b) and (c) appeals

3. An appeal made on ground (b) is that the matters comprising the alleged breach of planning control have not occurred. While the appellant has not formally lodged an appeal on ground (b), it is clear from the evidence that he is claiming that the breach of planning control has not occurred. Indeed, he asserts that the breach of planning control relates to use of the land for agricultural purposes. The onus is, however, on the appellant to make their case under ground (b). In this regard, I have not been provided with any objective or persuasive evidence to demonstrate that the breach of planning control had not occurred when the notice was issued or, indeed, that it related to use of the land for agricultural purposes.
4. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The claim made by the appellant is that the shipping container and sectional building on the land are exempt from the requirement for Building Regulations approval owing to their size and because they are being used in connection with agricultural use of the land.
5. The Building Regulations are a separate controlling regime and do not determine whether planning permission is needed for development on a site. It is relevant to consider whether the breach of planning control constitutes development applying s.55 of the 1990 Act and, furthermore, if so whether any such development is permitted development by virtue of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
6. In respect of the above, there is no evidence that the site has planning permission for a storage use. On the evidence before me, I cannot be certain if the land has been used for agricultural purposes in the past. Section 55(2)(e) of the 1990 Act states that the '*use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used*' is not development. The appellant provides no objective or persuasive evidence that the breach of planning control relates to an agricultural (or indeed forestry) use.
7. Even if the appellant had successfully demonstrated that the breach of planning control related to an agricultural or forestry use, I find, as a matter of fact and degree, that the '*sectional building*' is a building. It would not, however, be a permitted development building in respect of applying either Classes A or B of Part 6 of Schedule 2 of the GPDO owing to the size of the site and/or the fact that no prior approval application was submitted to the local planning authority (LPA) prior to it being erected. As a matter of fact and degree, I do not find that the shipping container is a building, but even if one were to disagree with this the above conclusion would also be relevant.
8. In addition to the above, it is noteworthy that in respect of Part 6 development the GPDO defines agricultural land as '*land which, before development is permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden*'. There is no evidence before me to indicate that when the breach of planning control took place, the appellant was engaged in an agricultural trade or business.

9. For the reasons outlined above, I conclude that the appellant has not demonstrated that the breach of planning control did not occur. Furthermore, the evidence does not support the appellant's claim that the breach of planning control does not constitute development requiring planning permission. On the evidence that is before me, the breach of planning control amounts to a material change of use of the land for storage purposes. In addition, the evidence is that the shipping container and sectional building have been placed on the land to facilitate the material change of use of the land for storage purposes.
10. I conclude that the breach of planning control requires planning permission. The ground (b) and (c) appeals fail.

Ground (d) appeal

11. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
12. The breach of planning control relates to a material change of use of the land for storage purposes. For the unauthorised use of the land to be immune from enforcement action, and, hence lawful, it would be necessary for the appellant to demonstrate ten years continuous use of the land on this basis. While the appellant states that *'most of the sandstone grit shaped stones have been on this parcel of land from at least the 1950s'*, this is not substantiated with any objective or unambiguous evidence. The appellant claims that he contacted the LPA *'about seven years ago'* about the need or otherwise for planning permission but did not receive a reply. No evidence has been provided to corroborate such a claim and, in any event, alleged contact with the LPA does not in itself equate to a timescale relating to carrying out development on the site.
13. Furthermore, the appellant has not provided any persuasive evidence to indicate that the shipping container has not been sited on the land for storage purposes. He does not dispute the LPA's Google aerial imagery which does not show a stored shipping container, the identified stored materials, or the sectional building on the land for a continuous ten years from 8 September 2012. The Council's evidence casts sufficient doubt about the appellant's claim that the development is immune from enforcement action owing to the passage of time.
14. On the evidence that is before me, and, on the balance of probability, I conclude that when the notice was issued it was not too late to take enforcement action in respect of the breach of planning control. I therefore conclude that the ground (d) appeal fails.

Ground (e) appeal

15. The appeal on ground (e) is that copies of the notice were not properly served on everyone with an interest in the land as required by s.172 of the 1990 Act.

16. The appellant does not actually claim that the notice was not properly served on everyone with an interest in the land, but rather that it was served on an individual, i.e., his son Ross Allen, who does not have an interest in the land.
17. The LPA do not dispute that the notice was served on Ross Allen. The appellant comments that this represents a form of harassment. This is a matter that would need to be separately addressed between the appellant and the Council. It is not, however, relevant to the consideration of the ground (e) appeal. There is no evidence that all those with an interest in the land, in particular the appellant, did not receive a copy of the notice. In fact, the LPA's evidence shows that the appellant did receive a copy of the notice and, furthermore, he is clearly aware of it as he is the appellant in terms of this appeal.
18. On the evidence that is before me, I am satisfied that all those with an interest in the land, irrespective of any possible error relating to Ross Allen, were aware of the notice and hence the potential to appeal. There is no evidence that any interested party has been substantially prejudiced in respect of this matter, particularly from the point of view of being able to lodge an appeal. Therefore, the ground (e) appeal fails.

Ground (a) appeal and the deemed planning application

Main issue

19. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
20. I have considered the reasons for issuing the notice. The appeal site falls within land designated as Green Belt and hence the main issues are whether the breach of planning control is inappropriate development in the Green Belt, including its effect on openness and the purposes of the Green Belt; the effect of the development on the character and appearance of the area; and, if the development is inappropriate in the Green Belt, 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 development.

Whether inappropriate development in the Green Belt

21. Paragraph 150 of the National Planning Policy Framework 2021 (the Framework) states that '*certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it*'. Paragraph 150 e) states that such a form of development includes '*material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*'.
22. I find that the breach of planning control has not preserved the openness of the Green Belt when considered from the point of view of the visual and spatial aspects of openness. In combination, the shipping container, outside stored materials and items, and the sectional building, have eroded what was otherwise an undeveloped and open site.
23. The evidence is that the sectional building and shipping container have facilitated the unauthorised use of the land for storage purposes. There is no evidence from the parties as to whether these are buildings or a use of land,

but whether they are considered as buildings or a use of the land, owing to their position, scale and use, they neither meet any of the Green Belt exceptions in paragraph 149 a) to g) of the Framework, nor preserve the openness of the Green Belt having regard to paragraph 150 of the Framework.

24. I conclude that the unauthorised development is prominent in view when experienced from Cockley Hill Lane and some moderate harm has been caused to the openness of this part of the Green Belt. The breach of planning control therefore constitutes inappropriate development in the Green Belt. Having regard to paragraph 148 of the Framework, this is a matter to which I afford substantial weight in decision making terms.

Purposes of the Green Belt.

25. The evidence is that prior to the breach of planning control taking place, the land was devoid of built development and was predominantly green including the provision of some trees. The site is contiguous with other rising green and undeveloped land. The locality is essentially rural in character and appearance and represents a marked visual contrast to the more built up and urbanised development that exists to the west (i.e., Cockley Meadows and beyond).
26. I find that the breach of planning control has had an unacceptably urbanising impact in this part of the Green Belt in so far that it represents a material departure from a site that was otherwise more rural and open in character.
27. In the above context, I find that use of the land for storage purposes, coupled with associated facilitating development, has resulted in some harmful countryside encroachment. In this regard, I conclude that the breach of planning control conflicts with one of the purposes of the Green Belt, i.e., to assist in safeguarding the countryside from encroachment.

Character and appearance

28. The sectional building, shipping container and storage of timber pallets, stone, and plastic storage boxes are prominent when viewed from Cockley Hill Lane. The sectional building and shipping container do not assimilate well into what is a more rural landscape owing to their out of keeping materials, box-like urban appearance, size and position. In addition, the timber pallets, stone and plastic storage boxes do not add positively to what was previously a vegetated site and which contributed positively and distinctively to an essentially more green and undeveloped part of Cockley Hill Lane.
29. For the above reasons, I conclude that the breach of planning control has caused some adverse harm to the character and appearance of the area. Therefore, it does not accord with the design, character and appearance requirements of policy LP24 of the Kirklees Local Plan Strategy and Policy 2019 and paragraph 174(b) of the Framework.

Other considerations

30. The appellant claims that there was previously a building on the land and that the site has been used by his family since the 1950s for agricultural purposes. The evidence is not clear about whether there was a building on the land previously, particularly as a third party has commented *that 'the garage was never on that piece of land. The garage was originally sited above 5, Cockley Hill Lane, where a house has now been built'*. In addition, and, as detailed

above, I have not been provided with any objective evidence that when the notice was issued, the land was in use for agricultural purposes. Indeed, there is no persuasive evidence before me to indicate that the site has ever been used for agricultural purposes.

31. In any event, the breach of planning control does not relate to an agricultural use. The ground (a) appeal has been considered in respect of the breach of planning control, i.e., a non-agricultural use, and I have found that it does not accord with relevant Green Belt and design policies.

Planning balance and conclusion

32. The breach of planning control constitutes inappropriate development in the Green Belt. Harm has therefore been caused to the Green Belt by definition. This is a matter to which I afford substantial weight. Moderate harm has been caused to the openness of the Green Belt and there is some conflict with one of the purposes of the Green Belt. I have also concluded that some adverse harm has been caused to the character and appearance of the area.
33. In this case, I find that the harm by reason of inappropriateness, and the other identified harm, is not clearly outweighed by any other considerations so as to amount to the very special circumstances necessary to justify development. Therefore, the ground (a) appeal fails.

Ground (f) appeal

34. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
35. The purpose of the notice is to remedy the breach of planning control. The appellant does not provide any evidence to indicate why the steps are excessive or indeed what lesser steps may remedy the breach of planning control. Therefore, the ground (f) appeal fails.

Ground (g) appeal

36. An appeal on ground (g) makes the claim that the period specified in the notice in accordance with s.173(9) of the 1990 Act falls short of what should reasonably be allowed.
37. The appellant does not indicate why he considers that the compliance periods in the notice are unreasonable. Instead, he asserts that planning permission is not required for the development and that the earth excavation was for agricultural purposes. These are not relevant matters to consider as part of the ground (g) appeal and, furthermore, there is no objective or persuasive evidence before me to substantiate such claims.
38. On the evidence that is before me, the compliance periods are reasonable and hence I conclude that the ground (g) appeal fails.

Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR