



Appeal Decisions

Site visit made on 3 May 2023

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an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal A Ref: APP/P0240/C/21/3280976

Land at Rear of Brick Kiln Farm, Chaul End Road, Caddington LU1 4AT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by Mr Tom Valler against an enforcement notice issued by Central Bedfordshire Council.
 - The notice was issued on 15 July 2021.
 - The breach of planning control as alleged in the notice is the erection of timber and metal framed structures and the creation of an area of hard standing by the deposition of road planings, rubble and hardcore, all in the approximate positions shown edged in blue on the attached plan.
 - The requirements of the notice are (a) Demolish and remove from the land the unauthorised timber and metal framed structures; (b) Remove from the land the unauthorised hard standing that has been created by the deposition of road planings, rubble and hardcore; and (c) Reinstate the land to its former condition.
 - The period for compliance with the requirements is 6 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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Appeal B Ref: APP/P0240/C/21/3280977

Land at Rear of Brick Kiln Farm, Chaul End Road, Caddington LU1 4AT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by Mr Tom Valler against an enforcement notice issued by Central Bedfordshire Council.
 - The notice was issued on 15 July 2021.
 - The breach of planning control as alleged in the notice is the material change of use of the land to a mixed use of general industrial and storage purposes including the storage, breaking and repair of motor vehicles, the siting of a metal container and portacabin for industrial and storage purposes and the storage of a mobile home on the land.
 - The requirements of the notice are (a) Cease the general industrial and storage use of the land including the storage, breaking and repair of motor vehicles; (b) Remove the metal container and portacabin from the land; (c) Remove the mobile home from the land; and (d) Restore the land to its former condition.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/P0240/X/21/3284137

Brick Kiln Farm, Chaul End Road, Caddington LU1 4AT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr T Valler against the decision of Central Bedfordshire Council.

- The application ref CB/21/00901/LDCE, dated 2 March 2021, was refused by notice dated 22 April 2021.
 - The application was made under section 191(1)(a) the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is use of the application site for Use Class B2 (General industrial) / B8 (General storage).
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Decisions

Appeal A Ref: APP/P0240/C/21/3280976

1. The ground (d) appeal partly succeeds and the enforcement notice is varied by the deletion of 'approximate positions' in the breach of planning control in section 3 of the notice and the substitution instead of 'large area'.
2. The ground (g) appeal succeeds and the enforcement notice is varied by the deletion of '6 months' in sections 6(a), 6(b) and 6(c) of the notice and the substitution in each case of 'twelve months'.
3. Subject to the variations 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 1990 Act as amended.

Appeal B Ref: APP/P0240/C/21/3280977

4. The ground (g) appeal succeeds and the enforcement notice is varied by the deletion of '6 months' in sections 6(a), 6(b), 6(c) and 6(d) of the notice and the substitution in each case of 'twelve months'.
5. Subject to the variations 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 1990 Act as amended.

Appeal C Ref: APP/P0240/X/21/3284137

6. The appeal is dismissed.

Reasons

LDC Appeal C

7. The main issue is whether the land has been in Class B2/B8 use for a period of more than ten years and whether that use has not been abandoned such that it is immune from enforcement action. The onus of proof is on the Appellant but his evidence does not need to be corroborated by independent evidence. Furthermore, provided the Appellant's evidence is sufficiently precise and unambiguous there shall be no reason to withhold an LDC.
8. The appeal site, excluding an access way off Chaul End Road, is to the rear and east of properties with frontages onto the road. The access way, which is shared by properties to the north and south, continues through the site to land to the east which is in use for the breaking and repair of vehicles. On the south part of the site are three buildings, referred to by the Agent as Buildings A, B and C, and on the north part are four buildings, referred to as Buildings D, E, F and G. The seven buildings are in disrepair though currently in use.
9. Between 1987 and 2012 the appeal site was occupied, either wholly or partly, by C and R Fabrication, a business owned by Mr Phillip John Cox, who

passed away in 2012. The business manufactured metal products such as staircases, fences and gates. Mr Peter Cox, the son of Mr Phillip John Cox, has claimed in a Statutory Declaration that the appeal site and the seven buildings were "...the extent of the total business premises used by my father at Brick Kiln Farm". The Appellant relies, also, on a Statutory Declaration by Mr Perry Gunfield and he claims that only the south part of the site and Buildings A, B and C were in use by the business between 1987 and 2012.

10. The Appellant has, himself, submitted a Statutory Declaration. In this he states that "A building on the site (building A...) was rented to Mr John Cox on the property from about 1987 until 2012. John Cox obtained an LDC for B2 general industrial use for his metal fabrication business on the site in 1992" (the LDC was granted in 1993), and "Throughout my period of ownership...I confirm that the property has been in a B2/B8 industrial/storage use, both by Mr Cox and myself and my relatives for activities that include the metal fabrication business, the storage, dismantling and distribution of vehicles, and as a builders' yard, for storage and distribution of building materials. The intensity and proportions of the various uses has varied over the years but has never been abandoned".

11. The Statutory Declarations are inconsistent and contradictory. Mr Peter Cox claims that his father used all the buildings and all of the site for his business, whereas the Appellant claims that only one building was rented to Mr Phillip John Cox; the LDC of 1993 would suggest that the latter was the case. In between, Mr Gunfield claims that Mr Cox used half the site and three of the buildings. There is, furthermore, no documentary evidence of any of the uses of the land claimed by the Appellant that occurred alongside the fabrication business.

12. Aerial photographs of the site are only snapshots in time but are informative. Photographs of 2009 and 2010 show activity close to Building A but no activity on the north part of the site, which had on it, from what are clearly shadows, a line of trees running north to south. These trees also appear in photographs taken in 2016 and 2018 and it is only in a photograph taken in 2020 that there is evidence of activity on the north part of the site. The photographs are inconsistent with the Appellant's claim that "Throughout my period of ownership...I confirm that the property has been in a B2/B8 industrial/storage use". The 2016 and 2018 photographs show the south part of the site to be largely unused and in the same condition as the north part. This is consistent with the cessation of the fabrication business in 2012 and wholly inconsistent with the Appellant's claim that the site "...has been used for general industrial, storage and distribution uses..." since 1991.

13. There is no evidence of any Class B2/B8 use of the north part of the site for a period in excess of ten years. In this regard it is surprising that the Appellant's Agent stated, in his appeal statement, that "...the B2/B8 use of the whole application site had been lawfully established by..." 2012. The south part of the site, or at least part of it, was in lawful Class B2 use whilst Mr Phillip John Cox occupied one building and used land around it for his fabrication business. There is no documentary evidence of any Class B2/B8 use of the south part of the site, the payment of business rates ceased in 2012, between that year and 2020.

14. The Appellant's Agent has referred to the case of *Trustees of Castell-y-Mynach Estate v Taff-Ely B C* [1985] JPL 40. As he indicates this judgement established four criteria, not all of which need to be met, when considering whether a use of land has been abandoned. The use established by Mr John Cox, a fabrication business, clearly ceased when he died and, taking all evidence into

account, there was thereafter no intention by the Appellant and owner of the land to continue or reinstate that business. Evidence indicates, particularly the aerial photographs of 2016 and 2018 and on the balance of probability, that there was no commercial or business use of the land between 2012 and 2020. Even if there was some commercial activity soon after the 2018 photograph was taken the land had not been used for such activity for a period of about six years. Evidence indicates, as a matter of planning judgement, that the previous fabrication business use of part of the land was abandoned, and that the current use of the land for industrial and storage purposes commenced sometime after 2018 and has not subsisted for in excess of ten years such that the use is immune from enforcement action.

15. For the reasons given above the Council's refusal to grant an LDC in respect of the use of the application site for Use Class B2 (General industrial) / B8 (General storage) at Brick Kiln Farm, Chaul End Road, Caddington, Bedfordshire was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

Enforcement Appeal A

16. The land that is the subject of the enforcement notice is the land that is the subject of Appeal C and other adjoining land to the east and south-east. The areas edged in blue on the enforcement plan are the north and south parts of the LDC land and the majority of the adjoining land.

The ground (c) appeal

17. The ground (c) appeal is advanced on the basis that the Class B2 use of part of the land judged to be lawful in 1993 still exists. The conclusion reached above for Appeal C is that there is no lawful Class B2 use of part of the land. The ground (c) appeal must therefore fail.

The ground (d) appeal

18. A ground (d) appeal is made when the Appellant claims that the breach of planning control alleged in the enforcement notice, operational development, has subsisted for in excess of four years and is therefore immune from enforcement action. The critical date is thus 15 July 2017. The onus of proof is on the Appellant but his evidence does not need to be corroborated by independent evidence. The Appellant's Agent's statement on ground (d), except for the addition of two sentences to paragraph 4.34, is a copy of his statement for the ground (d) appeal in Appeal B. It refers, largely, to the use of buildings and land not to the subject of the notice which is operational development. The Council's evidence also lacks substance and simply refers to aerial photographs and to evidence submitted in relation to the linked LDC appeal, Appeal C.

19. The enforcement notice alleges the erection of timber and metal framed structures and the creation of an area of hardstanding by the deposition of road planings, rubble and hardcore. An aerial photograph taken in September 2018, over four years before the date of issue of the notice, shows timber and metal framed structures on the land that is the subject of Appeal C and an area of hardstanding extending through that land further to the east. It was noted at the site visit that some of the buildings that existed in 2018 still remain on the land and these must be regarded to be immune from enforcement action. Furthermore, the area of hardstanding also remains on the land and is immune from enforcement action. Other buildings and areas of hardstanding on the wider

enforcement land have not existed for in excess of four years and are not therefore immune from enforcement action.

20. The ground (d) appeal succeeds in so far as it relates to structures and an area of hardstanding that have existed on the land since before 15 July 2017. These have been removed from the scope of the enforcement notice; the structures being within the two small areas edged in blue on the plan attached to the enforcement notice and the area of hardstanding is outside any area edged in blue on the plan attached to the enforcement notice. The ground (d) appeal fails in relation to buildings and areas of hardstanding that have been introduced onto the land since 15 July 2017. These are within the large area edged in blue on the plan attached to the enforcement notice. The alleged breach of planning control set out in section 3 of the notice has been varied accordingly.

The ground (a) appeal

21. The main issues are; first, whether the operational development alleged in the enforcement notice, as varied as a result of the partly successful ground (d) appeal, is inappropriate development in the Green Belt, within which the appeal site is situated; second, the effect of the operational development on the openness of the Green Belt; and third, whether there are any material considerations that outweigh the harm by reason of inappropriateness and to openness such that very special circumstances exist.

The first issue – inappropriate development

22. Taking into account the outcome of the ground (d) appeal, the ground (a) appeal relates to timber and metal framed structures and areas of hardstanding that have been introduced onto the majority of the land to the east and south-east of the land that is the subject of Appeal C; edged in blue on the enforcement plan.

23. Paragraph 149 of the National Planning Policy Framework (NPPF) states that the construction of a new building is inappropriate in the Green Belt except where the building is for one of seven stated exceptions. None of the structures on the land are for any of the stated exceptions and, in this regard, the land is not previously developed but former agricultural land. The introduction of areas of hardstanding, and there are a number of these on the land, also does not fall within any of the exceptions and does not fall within any of the other forms of development that are not inappropriate in the Green Belt as set out in paragraph 150. The timber and metal framed structures and areas of hardstanding that have been introduced onto the land are inappropriate development in the Green Belt. In this regard the operational development carried out conflicts with Policy SP4 of the Central Bedfordshire Local Plan 2015-2035 (CBLP).

The second issue – openness of the Green Belt

24. Paragraph 137 of 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 Green Belts are their openness and their permanence”. Openness, as a concept, has two elements; spatial and visual. There is no doubt that the timber and metal framed structures erected on the land have undermined the spatial openness of the Green Belt. They are also visually unappealing and intrusive in an otherwise open area. The areas of hardstanding, in themselves, do not undermine the openness of the area. The operational development that is the subject of the enforcement notice has undermined the openness of the Green Belt

and has contributed to urban sprawl in this countryside area, in conflict with national policy set out in the NPPF.

The third issue – very special circumstances

25. Paragraph 147 of the NPPF states that “Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. Paragraph 148 states that “Very special circumstances’ will not exist unless the potential harm by reason of inappropriateness, and any other harm..., is clearly outweighed by other considerations”.

26. The operational development that is the subject of the enforcement notice is inappropriate development and the timber and metal structures erected on the land have undermined the openness of the area. The Appellant’s Agent has not referred to any considerations that could be weighed against the harm that has been caused. The harm by reason of inappropriateness and to the openness of the area is not outweighed by other considerations and very special circumstances do not exist in this case.

Conclusion

27. The operational development that is the subject of the enforcement notice is inappropriate development and the timber and metal structures erected on the land have undermined the openness of the area. The harm by reason of inappropriateness and to the openness of the area is not outweighed by other considerations and very special circumstances do not exist in this case. The ground (a) appeal thus fails and planning permission is withheld.

The ground (f) appeal

28. The structures and areas of hardstanding, given the outcome of the ground (d) appeal, are within the large area edged in blue on the plan attached to the enforcement notice. The Appellant’s Agent, other than claiming immunity from enforcement action through the passage of time for some structures and areas of hardstanding, has not indicated what lesser steps would overcome objections and remedy the breach of planning control. The ground (f) appeal must therefore fail.

The ground (g) appeal

29. Compliance with the requirements of an enforcement notice should be achieved as soon as is reasonably possible. Six months is insufficient time to achieve compliance, particularly as the requirements require that the land be reinstated to its former condition once structures and areas of hardstanding have been removed. The Appellant is seeking a compliance period of 16 months, but this would be excessive. Twelve months would be a reasonable period to achieve compliance with the requirements of the notice. To this extent the ground (g) appeal succeeds and the enforcement notice has been varied accordingly.

Enforcement Appeal B

The ground (c) appeal

30. The ground (c) appeal is advanced on the basis that the Class B2 use of part of the land judged to be lawful in 1993 still exists, and that a change of use from Class B2 to Class B8 is development permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as

amended). The conclusion reached above for Appeal C is that there is no lawful Class B2 use of part of the land. The ground (c) appeal must therefore fail.

The ground (d) appeal

31. A ground (d) appeal is made when the Appellant claims that the breach of planning control alleged in the enforcement notice, a change of use, has subsisted for in excess of ten years and is therefore immune from enforcement action. The critical date is thus 15 July 2011. The onus of proof is on the Appellant but his evidence does not need to be corroborated by independent evidence.

32. The use of part of the enforcement land was the subject of LDC Appeal C. In consideration of that appeal it was concluded that a previous use of part of the land ceased in 2012 and was thereafter abandoned. The change of use alleged in the enforcement notice commenced, on photographic evidence, sometime after 2018 and has not therefore subsisted for in excess of ten years. The ground (d) appeal must therefore fail.

The ground (a) appeal

33. The main issues are; first, whether the change of use of the land alleged in the enforcement notice is inappropriate development in the Green Belt; and second, whether there are any material considerations that outweigh the harm by reason of inappropriateness such that very special circumstances exist.

The first issue – inappropriate development

34. Paragraph 150 of the NPPF states that certain other forms of development, which include material changes in the use of land, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The land is, principally, in use for the storage, dismantling and repair of vehicles. Apart from narrow access ways the land is covered by broken vehicles, probably in excess of one hundred, and a static caravan, a portacabin and a container are sited on the land to support the principal use. The vehicles and supporting items undermine the spatial openness of the Green Belt and, given their unsightly appearance, they have a significant adverse effect on the visual openness of the area.

35. One of the purposes of including land in the Green Belt, as set out in NPPF paragraph 138, is 'to assist in safeguarding the countryside from encroachment'. The use of the land for the storage, dismantling and repair of vehicles is a general industrial and storage use that is commonly found in industrial areas within urban conurbations. It is not a use that is compatible within the countryside. The use of the land does not preserve the openness of the area and undermines a purpose of including land in the Green Belt. The use of the land must therefore be regarded to be inappropriate development in the Green Belt and conflicts with national policy for these areas as set out in NPPF paragraph 150 and with CBLP policy SP4.

The second issue – very special circumstances

36. Paragraph 147 of the NPPF states that "Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances". Paragraph 148 states that "Very special circumstances' will not exist unless the potential harm by reason of inappropriateness, and any other harm..., is clearly outweighed by other considerations".

37. The material change of use that is the subject of the enforcement notice is inappropriate development and the use of the land has undermined the openness of the area and a purpose of including land in the Green Belt. The Appellant's Agent has not referred to any considerations that could be weighed against the harm that has been caused. The harm by reason of inappropriateness and to the openness of the area is not outweighed by other considerations and very special circumstances do not exist in this case.

Conclusion

38. The change of use of land that is the subject of the enforcement notice is inappropriate development, and the use of the land has undermined the openness of the area and conflicts with a purpose of including land in the Green Belt. The harm by reason of inappropriateness and other harm is not outweighed by other considerations and very special circumstances do not exist in this case. The ground (a) appeal thus fails and planning permission is withheld.

The ground (f) appeal

39. The metal container, portacabin and mobile home are recognisable on site and do not need to be identified on a plan. Some structures on the land, those that were the subject of the ground (d) appeal in Appeal B, will remain but all other structures that have been erected to support the material change of use are identifiable and are required to be removed. The requirements of the notice are not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

40. Compliance with the requirements of an enforcement notice should be achieved as soon as is reasonably possible. Six months is insufficient time to achieve compliance, particularly as the requirements require that the land be reinstated to its former condition once the use of the land has ceased and the metal container, portacabin and mobile home have been removed. The Appellant is seeking a compliance period of 16 months, but this would be excessive. Twelve months would be a reasonable period to achieve compliance with the requirements of the notice. To this extent the ground (g) appeal succeeds and the enforcement notice has been varied accordingly.

John Braithwaite

Inspector