



Appeal Decision

Site visit made on 12 June 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd JUNE 2023

Appeal Ref: APP/R4408/C/22/3310965

Land lying to the south and east of Ladywood Road, Grimethorpe, Barnsley

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Philip Andrew Sharman against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice was issued on 4 October 2022.
 - The breach of planning control as alleged in the notice is (i) the material change of use of the Land for the siting and use of a caravan for human habitation and (ii) the material change of use of the Land for the storage of motor vehicles.
 - The requirements of the notice are (i) cease the use of the Land described in paragraph 3 (i-ii) of this notice, (ii) remove the caravan along with any associated items from the Land, and (iii) remove all motor vehicles from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed and 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.

Reasons

Ground (d) appeal

2. 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.
3. The appellant claims *'that cars and caravans have been stored on this land before it was fenced in'*. This claim is not supported by any objective evidence or indeed any timescales. Furthermore, the appellant does not provide any evidence to demonstrate a continuous ten years use of the land for the siting of a caravan for human habitation on the land or storage of motor vehicles. In addition, the photographs appended to the notice also cast doubt about any claim that the land was in continuous use for the storage of caravans and motor vehicles prior to the erection of fencing. Both this evidence, as well as photographs submitted by other interested parties, casts sufficient doubt about immunity from enforcement action owing to the passage of time.

4. As part of the ground (d) appeal, the appellant states that he fenced in the land *'to stop other people from parking their cars and caravans on here without planning permission'*. It is not clear whether this is a claim being made under ground (b) of s.174(2) of the Act. Even if that were the case, there is no objective or persuasive evidence from the appellant to substantiate a possible claim that when the notice was issued the breach of planning control had not occurred.
5. For the reasons outlined above, and, on the balance of probability, I conclude that the evidence does not support a claim that when the notice was issued it was too late to take enforcement action. The evidence is that the breach of planning control is not immune from enforcement action. Therefore, the ground (d) appeal fails. In addition, and to the extent that there is a hidden ground (b) appeal, I conclude that such an appeal also fails.

Ground (a) appeal and the deemed planning application

Main issues

6. 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. The appeal site falls within land designated as Green Belt. Therefore, 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, 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

7. 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'* and this includes *'material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)'*.
8. The evidence is that prior to the breach of planning control taking place, the land was open and there was an absence of built development. There was a path leading to Lady Wood positioned within the centre of the appeal site between No. 83 Ladywood Road and No. 1 Oak Street. To facilitate the unauthorised use of the land for the storage of motor vehicles and use of the caravan for residential purposes, the path has been relocated closer to No. 1 Oak Street and fencing has been erected around land adjacent to No. 83 Ladywood Road.
9. The mixed-use development has eroded the previously open nature of the appeal site in visual and spatial terms. Cumulative harm has been caused to the openness of the Green Belt arising from the breach of planning control and the erection of the new fencing. I accept that the immediate area includes dwellinghouses. However, prior to the unauthorised development taking place, the site provided some welcome open relief within an otherwise built-up housing estate.

10. Overall, I conclude that the breach of planning control has led to moderate and localised adverse harm to the openness of the Green Belt. Furthermore, to the extent that the site was previously undeveloped, apart from a path leading to Lady Wood, the development has led to some countryside encroachment. I therefore conclude that the mixed-use amounts to inappropriate development in the Green Belt and that there is conflict with one of the purposes of the Green Belt, i.e., assisting in safeguarding the countryside from encroachment. For these reasons, the development does not accord with the Green Belt requirements of policy GB1 of the adopted Barnsley Local Plan 2019 (LP) and the Framework.
11. Policy GB3 of the LP permits changes of use of buildings in the Green Belt subject to meeting specified criteria and states that '*we will not generally allow the change of use of Green Belt land to extend residential curtilages*'. The policy does not specifically permit other changes of use in the Green Belt and, in this respect, the appeal development does not meet the requirements of this policy. However, this policy is more restrictive than Green Belt policy in the Framework. Considering paragraph 219 of the Framework, I find that the policy is out of date. I therefore afford the conflict with this policy only limited weight in decision making terms. I afford the conflict with paragraph 150 of the Framework more and substantial adverse weight in the planning balance as a material planning consideration.

Effect on the character and appearance of the area

12. There is some pleasing order to the pattern of development in the housing estate. Most of the semi-detached dwellings are positioned in a linear form and set back from main roads with front amenity spaces. There is a consistency to the design and appearance of the buildings with most finished with brick and rendered walls and hipped roofs.
13. The breach of planning control unacceptably departs from the aforementioned design consistency. The appeal site has a somewhat unplanned and jarring impact when experienced by passers-by. The unauthorised development is now seen as a harmful visual distraction for those residents that previously experienced Lady Wood as a green and undeveloped break between properties. Owing to the position and appearance of the development, I find that it looks incongruous in the street-scene and fails to assimilate well with the surrounding pattern, type and appearance of development. I acknowledge that the harm caused to the character and appearance of the area is localised in extent, but nevertheless it does not mean that no harm has been caused.
14. For the above reasons, I conclude that some moderate and localised harm has been caused to the character and appearance of the area. Consequently, the development does not accord with the design, character and appearance requirements of policy GD1 of the LP and chapter 12 of the Framework.

Other considerations

15. Several third parties raise concern about the relocation of the path that previously went through the centre of the entrance to the site and the impact this has had on being able to access the rear of existing residential properties. Comments are also made about broken drainage manholes and preventing the emergency services from accessing Lady Wood in the event of a fire. I am not entirely clear whether separate permission was needed to relocate the path,

but, in any event, this is a matter that can be investigated separately and, if necessary, enforcement action taken. It has not been necessary for me to consider the other matters raised by interested parties given my decision to dismiss this appeal and uphold the notice.

Planning balance and conclusion

16. The breach of planning control amounts to inappropriate development in the Green Belt. 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. In addition, moderate harm has been caused to the character and appearance of the area. On balance, I find that the harm to the Green Belt 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 the development. This constitutes a clear reason for refusing the deemed planning application. Therefore, the ground (a) appeal fails.

Conclusion

17. 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