



Appeal Decisions

Site visit made on 22 May 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 July 2023

Appeal A Ref: APP/B3030/C/22/3307393

Appeal B Ref: APP/B3030/C/22/3307394

Land On the south side of Epperstone Road, Lowdham, Nottinghamshire NG14 7BS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeals are made by Mr Roger Jackson (3307393) and Mr Samuel Jackson (3307394) against an enforcement notice issued by Newark & Sherwood District Council.
 - The notice was issued on 18 August 2022.
 - The breach of planning control as alleged in the notice is:
The material change of use of the land, outlined in red and highlighted Blue on plan B, from agriculture to the production of wood fuel, along with the positioning on the land of equipment, machinery and materials associated with the material change of use including, but not limited to:
 - i. Biomass boiler (photo 1);
 - ii. Log splitter (photo 2);
 - iii. Wood drying kiln.
 - The requirements of the notice are to:
 - A. Cease the use of the land for wood fuel production and remove from the land all machinery, equipment, materials, vehicles, waste and all paraphernalia associated with the unauthorised use of the land as wood fuel production business, including, but not limited to:
 - i. Biomass boiler;
 - ii. Log Splitter;
 - iii. Wood drying kiln;
 - iv. All vehicles, containers, wood, materials, waste, machinery, equipment and any and all other paraphernalia.
 - B. Return the land to its condition prior to the unauthorised change of use.
 - The periods for compliance with the requirements are:
 - A. 120 days
 - B. 210 days.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B proceeds on grounds (f) and (g) only.
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Appeal C Ref: APP/B3030/C/22/3307395

Appeal D Ref: APP/B3030/C/22/3307396

Land On the south side of Epperstone Road, Lowdham, Nottinghamshire NG14 7BS

- The appeals are made under section 174 of the Act.
- The appeals are made by Mr Roger Jackson (3307395) and Mr Samuel Jackson (3307396) against an enforcement notice issued by Newark & Sherwood District Council.

- The notice was issued on 18 August 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission, operational 'development' consisting of:
 - A. *The creation of an earth bund, outlined in yellow on the aerial photograph as part of this notice.*
 - B. *The creation of a structure by the placing of two shipping containers connected by a canopy roof and concrete floor (as shown within photographs 1 & 2) and outlined in Blue on the aerial photograph as part of this notice.*
 - C. *The creation of a log drying kiln.*
 - D. *The creation of concrete walls to form a clamp as shown within photograph 3 and concrete walls adjoining the biomass boiler, both outlined in Red on the aerial photograph as part of this notice.*
 - The requirements of the notice are to:
 - A. *Demolish the earth bund outlined in yellow on the aerial photograph and remove all resultant materials from the land, other than those required to return the land to its condition prior to the unauthorised change of use.*
 - B. *Demolish the structures outlined in Blue on the aerial photograph and remove all resultant materials and waste from the land.*
 - C. *Demolish and remove from the land the concrete walls forming a clamp, as shown within photograph 3 and the concrete walls adjoining the biomass and outlined in Red on the aerial photograph as part of this notice.*
 - D. *Return the land to its condition prior to the unauthorised change of use.*
 - The periods for compliance with the requirements are:
 - A. 180 days
 - B. 120 days
 - C. 120 days
 - D. 210 days
 - Appeal C is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal D proceeds on grounds (f) and (g) only.
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Decision

Appeals A and B

1. It is directed that the enforcement notice relating to appeals A and B (EN1) is corrected and varied by:
 - The deletion of the wording "plan B" and substitute with "plan A".
 - The deletion of sub-paragraph 5A and substitute with:
 - A. *Cease the use of the land for wood fuel production and remove from the land all machinery, equipment, materials, vehicles, waste, containers, wood and all paraphernalia associated with the unauthorised use of the land as wood fuel production business, including, but not limited to:*
 - i) *Biomass boiler;*
 - ii) *Log splitter;*
 - iii) *Wood drying kiln.*
 - The deletion of "120" from sub-paragraph 6A and substitute with "150".
2. Subject to the corrections and variations, the appeals are 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 Act.

Appeals C and D

3. It is directed that the enforcement notice relating to appeals C and D (EN2) is corrected and varied by:
 - The deletion of sub-paragraph 3.C.
 - The deletion of sub-paragraph 5B and substitute with:

B. Demolish the structure including the two shipping containers, canopy roof and concrete floor, as shown within photographs 1 & 2 and outlined in Blue on the aerial photograph as part of this notice.
 - The deletion of "180" from sub-paragraph 6A and substitute with "210".
 - The deletion of "120" from sub-paragraph 6B and substitute with "180".
 - The deletion of "120" from sub-paragraph 6C and substitute with "180".
4. Subject to the corrections and variations, the appeals are 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 Act.

The Enforcement Notices

5. Although the notice refers to land off Epperstone Road, the appellant refers to 'Old Epperstone Road'. However, the different descriptions have not resulted in any confusion as to the actual location of the appeal site.
6. Section 176(1) of the Act provides a wide ranging power to correct or vary the terms of an enforcement notice provided that it would not result in injustice to the parties.
7. EN1 referred to a "plan B" in the breach of planning control. The Council have confirmed that this was a typing error and should have referred to "plan A" which was attached to EN1. There is no injustice in this regard and I have corrected EN1 accordingly.
8. Sub-paragraph 5Aiv of EN1 is repetition of the first part of sub-paragraph 5A. For succinctness I have amalgamated these by removing 5Aiv and adding to sub-paragraph 5A.
9. A wood drying kiln is described in EN1 whereas a log drying kiln is described in EN2. These drying kilns are the same, being plant equipment and not operational development as clarified in section 336 of the Act. As the drying kiln is not operational development, I have deleted reference to this from EN2. The removal of the drying kiln remains a requirement of EN1.
10. For the sake of clarity, sub-paragraph 5B of EN2 has been corrected in order to match the description of the structures in the alleged breach in sub-paragraph 3B.
11. Given the limited extent of the corrections, I am satisfied that no injustice to the appellant or the Council would arise by me correcting the notices in terms I have set out in paragraph one and three above. I have therefore done so using the powers available to me under Section 176(1) of the Act.

Appeals A and C – ground (a)

12. The ground of appeal for appeals A and C, is that planning permission ought to be granted for the matters alleged in the notices. I have considered each appeal on its individual merits. However, to avoid duplication I have dealt with the appeals together, except where otherwise indicated.

Main Issues

13. The main issues are:

- i) Whether the development is inappropriate development in the Green Belt;
- ii) The effect of the development on the character and appearance of the surrounding area;
- iii) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to very special circumstances necessary to justify the developments.

Reasons

Whether inappropriate development

14. Spatial Policy 4B of the Newark & Sherwood Local Development Framework Core Strategy & Allocations Amended Core Strategy 2019 (CS) relates to development in the Green Belt. Paragraph 149 of the National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt should be regarded as inappropriate, unless the development falls within the exceptions list. Paragraph 150 of the Framework also states that engineering operations and material changes in the use of land are not inappropriate in the Green Belt provided they preserve its openness.
15. The buildings detailed in the notices do not fall within the exceptions listed in paragraph 149 of the Framework and therefore are inappropriate development in the Green Belt.
16. Both spatial and visual impacts form part of the concept of openness of the Green Belt. Whilst the appellants describe that the operations from the permitted site is now spread over a larger area, in spatial terms, the buildings and engineering operations increase the volume of development on the appeal site to what was previously agricultural land, and subsequently does have a greater impact on the openness of the Green Belt. The development on the site as well as the activities and structures associated with the material change of use are visually prominent from within the site as well as from the surrounding area, particularly from the nearby public right of way. In both spatial and visual terms, the development has a greater impact on the openness than the previous situation. The development does not preserve the openness of the Green Belt and is inappropriate development as described in paragraph 150 of the Framework.
17. The appellants argue that the development does not compromise any of the five purposes of including land in the Green Belt however, given the development has encroached into the countryside, I consider that the

development does not comply with purpose c) of paragraph 138 of the Framework.

18. The development described in the notices are inappropriate development in the Green Belt and as such conflicts with Spatial Policy 4B of the CS and the Framework which seeks to safeguard the Green Belt from inappropriate development and impacts on openness.

Character and appearance

19. The area surrounding the appeal site is characterised by rural countryside with fields predominantly located around the site. There is built development scattered along Old Epperstone Road, mainly residential properties with the appeal site and another commercial building set away from Old Epperstone Road.
20. The appeal site has encroached into the open countryside beyond the visual envelop of the permitted operation site of the appellants business. The development is a large extension of the permitted site which is visually prominent and an intrusive feature within the area, particularly when viewed from the nearby public right of way. The site does sit within a valley location however, given the size of the structures at the site and the incongruous earth bund which is out of keeping with other features in the area, the development would compromise the character of the area.
21. The structures and features on the site do not have a typical farmstead or farmyard appearance. There is minimal vegetation around the site and given the topography of the land in the area, further landscaping would not completely screen the development and the structures would remain as detrimental features in the landscape.
22. The development has a harmful effect on the character and appearance on the surrounding area. The development is contrary to Policy DM5 of the Newark & Sherwood Local Development Framework Development Plan Document 2013 and Core Policy 13 of the CS which seeks development to protect and enhance landscapes and be in keeping with character of an area.

Other considerations

23. I have had regard to the 2018 planning permission (Council reference: 16/01271/FUL) and the related committee report for the change of use of land and associated features for the wood fuel production business. The appellants explain that the rural location of the business is necessary due to the source of the raw material and the market for the majority of its customers.
24. The wood fuel production business has been described as a renewable energy project and a farm diversification business being sustainable development that serves the local community.
25. The appellants state that the failure of this appeal would have a serious effect on business viability and cause real hardship, although minimal convincing evidence has been provided indicating the extent of this effect if the business had to revert back to its permitted site.

Conclusion

26. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework states 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 is clearly outweighed by other considerations. I have also found that the development has a harmful effect on the character and appearance of the surrounding area.
27. Other considerations have been identified some of which could be described as benefits and given the scale of the development, I attribute minimal weight to these benefits. These matters and benefits would not clearly outweigh the harm that I have identified above, particularly given the importance the government gives to the protection of the Green Belt as reflected in the Framework.
28. For the reasons outlined above, therefore, other considerations do not clearly outweigh the harm to the Green Belt and any other harm. Consequently, the very special circumstances needed to justify the development do not exist. The development is contrary to the relevant development plan policies and the Framework as a whole.

Appeals on ground (f)

29. An appeal on ground (f) is that the requirements of the notices exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach. Since the notices require the use to completely cease, the complete removal of buildings, structures and all other associated items from the land, and restoration of the land to its former condition, it is clear that the purpose of the notices is to remedy the breaches.
30. The appellants argue that the requirements are excessive with reference to part of the site being lawful, the economic damage to the business and that harm can be mitigated by a scheme of landscaping. These points have been discussed above and it was concluded that these matters do not outweigh the harm to the Green Belt.
31. The appellants also claim that the requirements are imprecise, and the notice is defective, as the wording "return to its condition prior to the unauthorised change of use" does not specify what the previous condition was. The appellants are best placed to understand the condition of the land prior to the unauthorised development given their business was located adjacent to the appeal site and it was them that undertook the work. The Councils Committee report for planning application 21/01830/FUL also provide aerial photographs of how the site was prior to the unauthorised works. The wording of the requirements is therefore acceptable in this regard.
32. Given that in respect of the breach of planning control the notices requirements are to completely remove all of the development and cease the use, it is clear that the requirements clearly go no further than remedying the breaches. Anything less than removal would not fully remedy the breaches.
33. Accordingly, I conclude that the requirements for both the notices are not excessive and the appeals on ground (f) fail.

Appeals on ground (g)

34. Ground (g) is that the period for compliance with the notices fall short of what is reasonable. With EN1, the time to comply with the requirements are 120 days and 210 days, respective to the requirements detailed as steps A and B. The appellants are seeking 270 days for step A and 360 days for step B.
35. In terms of EN2, the time compliance for the requirements are 180 days for step A, 120 days for step B, 120 days for step C and 210 days for step D. The appellants are seeking 270 days for step A and 360 days for step B.
36. The time compliances in EN1 and EN2 do not align. For example, EN1 requires the use to cease and all structures, equipment etc to be removed within 120 days and 210 days to restore land whereas EN2 requires the removal of the earth bund, which is effectively restoring the land, within 180 days. Sub-paragraph 5B of EN2 requires demolition of structures within 120 days which is the same amount of time for ceasing use in EN1. This effectively gives no time for demolition or removals after ceasing the use.
37. The appellants case for ground (g) is that the requirements will involve exceptionally high cost and extreme disruption to the business. However, as previously indicated, there is minimal convincing evidence before me as to the extent of the disruption to the business.
38. Given the above, I consider the timings expressed by the appellant to be excessive however, in order to provide coherence with both the notices, it is necessary to vary the times for compliance. Therefore, with EN1 the time compliance for A. is varied to 150 days with B. remaining as 210 days, and with EN2, the time compliance for A. is 210 days, B. is 180 days, C. is 180 days and D. to remain as 210 days.
39. The appeals on ground (g) therefore succeed to this limited extent and I have varied the notices accordingly.

Chris Baxter

INSPECTOR