



Appeal Decisions

Site visit made on 4 July 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 8th August 2023

Appeal A: Ref APP/Q3630/C/22/3301683

Land to the East of Fangrove Park, Lyne Lane, Chertsey, Surrey KT16 0BN

- 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 Best Holdings (UK) Limited against an enforcement notice issued by Runnymede Borough Council on 31 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, siting of a portacabin as shown outlined and crosshatched blue and secure storage units as shown outlined and crosshatched green on the Plan attached to the notice.
 - The requirements of the notice (Section 5) are to:
 - 5.1 Remove from the Land the portacabin including the steps leading to it and the handrail as shown in the approximate location outlined and crosshatched blue on the plan attached to the notice and as shown on photograph labelled A attached to the notice.
 - 5.2 Remove from the Land the secure storage units including the concrete laid at the front to facilitate access as shown in the approximate location outlined and crosshatched in green on the Plan attached to the notice and as shown on the photograph labelled B attached to the notice.
 - 5.3 Remove from the Land all materials, debris, plant and equipment associated with requirements 5.1 and 5.2 above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (d) (e) (f) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: Ref APP/Q3630/X/22/3295256

Fangrove Park, Lyne Lane, Lyne, Chertsey KT16 0BN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Wyldecrest Parks Management Limited against the decision of Runnymede Borough Council.
 - The application Ref RU.20/0723, dated 16 January 2020, was refused by notice dated 11 February 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is use in conjunction with the caravan park.
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Decisions

1. Appeal A 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.
2. Appeal B is dismissed.

Procedural Matters

3. Appeals A and B concern the same site.

Appeal A – Ground (e)

4. For an appeal to succeed under this ground, I must be satisfied on the balance of probabilities that copies of the enforcement notice were not served as required by section 172 of the Act. That section requires the local planning authority to serve a copy of the notice (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
5. However, I may disregard non-service under section 176(5) of the Act provided that neither the appellant nor the person not served have been substantially prejudiced.
6. The appellant company in Appeal A is the freeholder of the land, and it appears to be common ground that it received a copy of the notice. Notwithstanding the appellant's argument that a copy was not received at the stated registered address of the company, there can be no substantial prejudice to the company as it has exercised its right of appeal upon receipt of a copy of the notice.
7. It is further argued under this ground that the Council failed to serve a copy of the notice on the occupier of the land - Wyldecrest Parks Management Limited (the appellant in Appeal B) –the corporate entity which has leased the land from appellant company A and which operates Fangrove Park as a caravan site under licence from the Council.
8. However, I find Wyldecrest Parks Management Limited to have been duly served for the purposes of section 329(2) of the Act because it occupies the site and (a) the Council served a copy of the notice on "the occupier" at the site; and (b) affixed a site notice attaching a copy of the enforcement notice.
9. Even had I found that company not to have been duly served, I would not have found any substantial prejudice to have resulted as it is more likely than not – due to its apparently close relationship with appellant company A¹ – that it would have known about the issue of the notice and therefore would have had the opportunity to have made appeal representations. Further, in any event, appellant company A has made an appeal against the notice and has submitted a deemed planning application in respect of the breach of planning control.
10. For the above reasons, ground (e) does not succeed.

Appeal A – Ground (d); Appeal B

11. There are circumstances in which development becomes lawful, including when no enforcement action may be taken because the time for such action has expired².
12. In respect of the operational development (portacabin, secure storage units) constituting the breach of planning control alleged in the notice (Appeal A), no

¹ I have read that both companies share a Director. Both companies were represented by the same person at the site visit.

² Section 191(2) of the Act.

enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed³.

13. For the development for which the LDC is sought (Appeal B), no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach⁴ (that is to say, beginning with the date when the use of the land materially changed to use in conjunction with the caravan park – if such a material change has occurred – and with any such breach of planning control having occurred continuously throughout that period with no significant gap or gaps where it was not possible for the Council to take enforcement action).
14. In both appeals it is for the respective appellants to demonstrate with sufficiently precise and unambiguous evidence that, on the balance of probabilities, it was too late for the Council to take enforcement action⁵.

Operational development (enforcement notice; Appeal A)

15. The notice was issued on 31 May 2022, and so the appellant must demonstrate that the portacabin and secure storage units were substantially completed by 31 May 2018.
16. The appellants have submitted aerial photographs of the site over time from 1999, with the latest one dated 7 May 2018. However, looking with particular care at the locations in which they are identified in the notice, I cannot see the portacabin and secure storage units in any of those photographs. I also place significant weight on photographs submitted by the Council which appear to show no such structures in front of the gas storage compound in May 2018 but with the structures in place at that location in April 2022.
17. Further, while the portacabin and storage units are mentioned in statutory declarations dated 1 June 2020 (notwithstanding reference to the portable office being provided 'more recently' than a fixed office that was elsewhere on the site) there is a lack of sufficient precision therein as to when they were provided. Conversely, in response to a Planning Contravention Notice in 2019 the appellant was more precise in stating that the portacabin and secure storage units were brought onto the land in the summer of 2018. It is a normal understanding of the seasons that May precedes the summer months.
18. For these reasons, the appellant has not demonstrated on the balance of probabilities that on the date the notice was issued it was too late for the Council to take enforcement action in respect to the unauthorised operational development alleged. Accordingly, ground (d) fails.

Material change of use (LDC; Appeal B)

19. In essence, the appellant's case is that the appeal site has long been used in conjunction with the licenced caravan park to its west. As well as accommodating the bulk gas tank compound since 1999⁶, and the more recent portacabin and shipping containers, it is said that vehicles have regularly parked in the area and that it has been used for locating park homes before they are brought onto the main park or before they are removed off-site for disposal (along with cleared vegetation and materials from the old base).

³ Section 171B(1) of the Act.

⁴ Section 171B(3) of the Act

⁵ On the date the notice was issued in Appeal A; On the date the LDC application was made in Appeal B.

⁶ Approved under RU 99/0612 and RU 99/1163.

20. It is said that the site licence conditions (2009) have supported such use, and by implication the general deposition of green waste upon the land from pitches, since conditions 8 and 19 impose the following requirements (with, it is argued, the appeal land being the only area outside of the extensively developed licenced site extensive enough in itself to meet them):

Grass and vegetation shall be cut and removed at frequent and regular intervals.

Trees within the site shall (subject to necessary consents) be maintained.

Any cuttings and accumulations of litter or waste shall be removed from the immediate surrounds of a pitch.

All derelict or abandoned Park Homes must be removed to outside the site boundary within 3 months of them being deemed as such in the opinion of the Authorised Officer. The plot within which any unit is removed must be left in a tidy condition and no waste may remain.

However, I do not accept that argument as there will be other ways of complying with the aforementioned conditions (by removing Park Homes entirely from the locality in one stage, for instance) and in any respect it does not of course provide the evidence that is needed to show such use has continuously occurred for the required period. I also note that the Fangrove Park Rules (Revised 13 October 2015) require that "Garden refuse such as grass cuttings and weeds should be disposed of in wheelie-bins provided by the local authority" (Rule 11) and that "Access to the woodland adjacent to the park is not allowed" (Rule 18)⁷. In the context of these Rules, I am therefore not persuaded of the suggestion that the land has been used by residents (or on their behalf) to routinely or consistently deposit or burn green waste - nor indeed for recreation. Further, the 'firepit' seen on my site visit does not in itself evidence a material change of use of the land for a continuous period of at least 10 years (nor do the remains of an historic unused garage).

21. While the appellant says that the land first began to be used in conjunction with the caravan park for recreation, notwithstanding current Rule 18 prohibiting access to it, there is very limited evidence of recreational use over the relevant timescale required for enforcement immunity. I accept that there was the holding of social events which used a power supply (which is still present) but from the representations I have read these amounted to a few, mostly annual, events which ceased to exist around 20 years ago (or more).
22. The aerial photography submitted by the appellant is not helpful to its case. Were park homes and vehicles stored on the land regularly as described, over the relevant timescale required for enforcement immunity, I would have reasonably expected to see at least one in at least one of the photographs taken from 1999 to 2018. However, I cannot see anything that looks unambiguously like either a park home or a vehicle. Further, while there appears to be deposits of materials at various locations in the later photographs (from 2015), the land appears materially undeveloped (save for the gas compound) and free of such deposits in photographs before 2015.

⁷ Notwithstanding the appellant's suggestion that the appeal site is not the woodland described in the Park Rules, based at least partly on the fact there are no 'no entry' signs, I am satisfied that this can only be the woodland that is meant and understood as such by Park residents. It is adjacent to the Park and in the same control.

23. The appellant has submitted statutory declarations but they are not, apart from one, sufficiently precise and unambiguous. The declarations from the appellant company Director and the resident maintenance operative state how long they have known the land and declare in effect that throughout that time the land has been used in conjunction with the Park. However, while they describe a variety of activities they are not sufficiently precise as to when they commenced and for how long they continued - for instance, the stated storage of park homes and vehicles on the land (which are not visible in any of the submitted photography). Likewise, the (very similar) statutory declarations from other residents say the land 'has been used for storage and recreation purposes' but they are not sufficiently precise in stating when the use for such purposes commenced and whether, and for how long, they continued. The statutory declaration from Anthony Wyatt is more precise, but is limited to a period over 20 years ago and falling short of the relevant period over which a continuous material change of use needs to be shown.
24. The bulk gas tank compound is a relatively very small area with planning permission and fenced-off from the wider site for which the LDC is sought. Its existence and use did not, in my judgement, cause the material change of use of the wider parcel of land as a whole from which it is physically and functionally separate⁸.
25. For these reasons, and taking all of the evidence together, the appellant has not demonstrated on the balance of probabilities that it is too late for the Council to take enforcement action for a breach of planning control constituting a material change of use of the land. I am not persuaded to that standard of proof that any such material change has occurred continuously for a period of at least 10 years at the time of application for the LDC. Accordingly, Appeal B does not succeed.

Appeal A – ground (a) and the deemed planning application

Main Issues

26. The main issues are:

- whether or not the portacabin and secure storage units constitute inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt;
- would harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development?

Reasons

Inappropriateness/Openness of the Green Belt

27. Chapter 13 of the National Planning Policy Framework (the Framework) stresses that the Government attaches great importance to Green Belts.
28. 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.

⁸ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

29. The appeal site is essentially open woodland with a small part of it at one end fenced-off around the bulk gas tank compound - next to which the storage units and portacabin have more recently been sited. Notwithstanding that the large majority of the appeal site is undeveloped, I find that it meets the Framework's definition of Previously Developed Land (PDL)⁹ due to such features as the redundant garage structure centrally located within the site which is noticeable upon entering the interior of the land. While greenery surrounds it, it would go too far to say it had 'blended into the landscape' to the extent that the land falls outside the PDL definition, particularly when taking into account other features such as the installed electrical outlet point elsewhere on the land.
30. Due to their size, permanence and attachment to the ground (including by way of weight) I consider the storage units and portacabin to be buildings. Paragraph 149(g) of the Framework says that new buildings constituting limited infilling or the partial or complete redevelopment of PDL are not inappropriate in the Green Belt provided they do not have a greater impact on the openness of the Green Belt than the existing development.
31. The new red and dark grey buildings are of angular utilitarian construction of significant size and bulk and, unlike the redundant garage deep within the greenery of the site, sit prominently near its boundary (being highly visible from the west and south). As a result, they substantially reduce both visual and spatial openness of the Green Belt land while taking into account nearby pre-existing lawful development associated with the land and the caravan park (including the bulk gas tanks which take up a smaller footprint, are at relatively low-level and are set back further into the site). The concrete ramp and steps serving the buildings further contribute to the overall reduction in openness. The landscaping condition suggested by the appellant would not affect the unacceptable loss of spatial openness resulting from the development.
32. As such, the appeal development has a greater impact on the openness of the Green Belt than the pre-existing development. It is therefore inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other considerations

33. The appellant says that the current siting of the site office (portacabin) and storage units is an efficient use of land, and that their relocation to within the licenced caravan park would (a) adversely affect the amenities of residential occupiers therein due to the nature of the use; and (b) result in lower housing provision as homes would need to be removed to accommodate the structures. However, I give these arguments limited weight as the appellant has not sufficiently demonstrated with evidence that relocation to within the licenced site would cause either of these outcomes. Indeed, the Council has detailed a survey it completed following the appeal being made - it concluded that the licenced site had at least 5 empty plots surplus to the 150 homes set as a maximum under its licence. Further, the site office and adjacent storage area was previously located within the licenced site and I have seen no evidence of harmful impacts from that association.

⁹ Pp70-71 of the Framework.

34. For the same reasons, I place limited weight on the appellant's argument that (were it not for the current location of the storage units) it would be environmentally unsustainable to make journeys further afield to obtain the maintenance plant and materials necessary to comply with licence conditions. I am not persuaded through evidence that storage could not be re-located to within the site, as before the unlawful development subject to the notice.

Green belt/planning balance

35. Paragraph 148 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it.
36. Having considered all matters raised in support of the appeal development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the development is contrary to the guidance in the Framework and Policy EE14 of the Runnymede 2030 Local Plan which together seek to protect the Green Belt.
37. The appeal development does not comply with the development plan as a whole, and there are no material considerations which outweigh that finding. Accordingly, I will not grant planning permission and the appeal under ground (a) does not succeed.

Appeal A – ground (f)

38. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
39. The appellant suggests that it is excessive for the notice to require the removal of the portacabin containing the site office, since a site office previously existed on the licenced site.
40. It is clear to me from the way the notice has been drafted that its purpose is to remedy the breach of planning control by restoring the land to its condition before the breach took place. Deleting the requirement to remove the portacabin would not achieve that legitimate purpose. Even were the purpose of the notice to remedy harm to amenity, I have found that the portacabin causes harm to the Green Belt and so its retention would not achieve that purpose either.
41. For these reasons, the requirements of the notice are not excessive and the ground (f) appeal does not succeed.

Appeal A – ground (g)

42. For success under this ground, I must be satisfied that the compliance period given in the notice falls short of reasonable.
43. For the reasons I gave in paragraphs 33-34 above, I do not accept the thrust of the appellant's argument under this ground that a lengthy period would be needed due to a stated need remove occupied park homes from the licenced site to accommodate re-located office and storage structures.
44. Three months is a reasonable time to undertake the necessary works of removal, which do not appear to be complex operations. Ground (g) fails.

Conclusions

45. Appeal A 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.
46. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use in conjunction with the caravan park was well-founded and that appeal B should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Walker

INSPECTOR