



Appeal Decision

Site visit made on 1 August 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07/09/2023

Appeal Ref: APP/X4725/C/23/3316326

Land on south side of Warmfield Lane, Marshall Hill, Warmfield, West Yorkshire WF1 5TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Graham Hollings against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 6 January 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use of the land from agricultural to a mixed use of agricultural and (i) use for the importation and storage of demolition waste materials; (ii) use of the land for residential purposes by the siting and use of a static caravan (the caravan) and shipping container used for domestic storage (the shipping container); and (iii) associated operational development to erect a wooden veranda and a timber enclosure exceeding 2m in height adjacent to the caravan.
- The requirements of the notice are to: (1) Cease the residential use of the land; (2) Remove the caravan, the shipping container, the wooden veranda and timber enclosure panels adjacent to the caravan and all demolition waste materials from the land; (3) Cease the use of the land for importation and storage of demolition waste materials; and (4) Remove all stored demolition waste materials from the land.
- The period for compliance with the requirements is: 6 months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. For conciseness, I shall refer to the constituent parts of the breach as "the change of use" and "the operational development".
2. I sought the parties' views on the apparent similarity between the removal of "all demolition waste materials" and of "all stored demolition waste materials" sought by requirements (2) and (4).
3. It is agreed that requirement (2) refers to any materials that would arise from the removal of the caravan, the shipping container, the wooden veranda, and the timber enclosure panels. A variation of the notice to make that clear would not give rise to injustice. I am satisfied that requirement (4) concerns the demolition waste materials identified in the breach of planning control.

The appeal on ground (a)

4. The main issues in this appeal are:

- Whether the change of use and the operational development are inappropriate development in the Green Belt ("the GB") having regard to the National Planning Policy Framework ("the Framework") and any relevant development plan policies.
- The effect of the change of use and operational development on the openness and purposes of including land in the GB.
- The effect of the change of use and operational development on landscape character.
- Whether a residential presence on the land is justified by a rural business need.
- If any part of the change of use and the operational development constitutes inappropriate development, 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 required to justify the proposal.

Reasons

Whether the change of use and the operational development are inappropriate development

5. Paragraph 150 e) of the Framework states that material changes in the use of land (such as for outdoor sport or recreation, or for cemeteries and burial grounds) may not be inappropriate in the GB. However, any such use must preserve the openness of the GB, and not conflict with the purposes of including land within it, to be found not inappropriate.
6. The examples of uses that might not be inappropriate development set out in paragraph 150 e) is not an exhaustive list. However, the words "such as" indicate that, to be found not inappropriate, other uses must be comparable. The examples may be defined by the presence of green infrastructure throughout the site, the relative absence of large structures, and low levels of activity.
7. The residential use, if limited to a single caravan, does not greatly alter the green infrastructure or involve significant levels of activity but the static caravan and the shipping container are large structures sited on the land. The importation and storage of demolition waste materials appears to have been limited, or at least has reduced since the notice was issued. However, the components of a mixed use may change in scale and proportion over time, according to the ebb and flow of business activity. If the storage of demolition waste materials thus became a more significant component it could result in large amounts of material and greater levels of activity. For these reasons, the change of use is inappropriate development, harmful to the GB by definition.
8. Section 336 of the Act confirms that a building includes "any structure or erection". The wooden veranda and the timber enclosure are therefore buildings for the purposes of this assessment. The Framework regards new buildings as inappropriate in the GB but paragraph 149 c) may allow an exception for "the extension or alteration of a building". However, the static caravan meets the statutory definition of a caravan in section 29(1) of the Caravan Sites and Control of Development Act 1960, so it is not a building in

planning terms. Accordingly, the exception allowed for by paragraph 149 c) cannot apply to the operational development, which is inappropriate development and, by definition, harmful to the GB.

The effect on the openness and purposes of including land in the GB

9. The essential characteristics of the GB are its openness and permanence. While a larger stable and a barn were on the land, they have been removed. The effect of the change of use and the operational development on the GB must therefore be compared with the situation immediately before the breach occurred. The land was a paddock with a small stable building at that time.
10. The stationing of the caravan and the shipping container, which may be seen in some views from the road, and the veranda and timber enclosure have diminished the openness of the GB in visual and spatial terms. If the appeal were to succeed, the appellant proposes to finish cladding the caravan and paint the container black. While that would help them blend with their surroundings, it would not alter their effect on the openness of the GB.
11. The appellant states that he needs the shipping container to store agricultural equipment he uses on the land, including a tractor, a grass cutter, a roller, a rotavator and other tools. While he indicates he could remove it because living on site allows him to protect his equipment, the shipping container appeared to be a workshop instead at the time of my site visit.
12. The importation of demolition waste materials had ceased by the time of my site visit. I understand their storage has been reduced and the appellant has confirmed that he will continue to remove them. Any continuation, increase or resumption of this element of the mixed use could harm the openness of the GB in visual and spatial terms.
13. For these reasons, the change of use and the operational development the subject of the deemed planning application fail to preserve the openness of the GB. This is at odds with the visual characteristics of the GB. Substantial weight must be given to this harm to the GB.

Landscape character

14. The site comprises 3 paddock areas and lies adjacent to a dismantled railway within undulating farmland between Warmfield and Kirkthorpe. The landform is dominated by hills to the east and west of the site and falls away to the River Calder to the north west.
15. Viewed in this context, the change of use and the operational development do not adversely affect the landscape elements which contribute to landscape character. The site has well-defined hedgerows on its boundaries, such that vegetation and trees which are characteristic of that landscape type are not directly affected and unacceptable visual intrusion is avoided. No incongruous landscape elements have been introduced.
16. Accordingly, the change of use and the operational development do not conflict with policy D8 of the Wakefield Development Policies Development Plan Document and are acceptable in terms of landscape character.

Rural business need

17. While the development of isolated homes in the countryside should be avoided, the Framework allows for some exceptions. One such exception is where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
18. The appellant considers it important to live on the land to care for livestock. At the time of my site visit, there were ponies grazing in one of the paddocks and chickens in a coop. While this is not the full quota the appellant wishes to keep on the land, it is not clear from either party's submissions how much livestock was on the land when the notice was issued or would be kept there if the appeal were to succeed.
19. It is necessary to regularly check on livestock and to attend at certain times, for example when administering medication or when they give birth. However, any need for a residential presence must be determined having regard to the nature and scale of the enterprise in question. In the absence of a relevant business plan, it has not been shown that the welfare of animals on the land creates an essential need for a residential presence. Accordingly, I can only afford limited weight to this matter.

Other considerations

20. The appellant has maintained the land for many years and is following sustainable principles, using solar energy, a composting toilet and capturing rainwater. These actions may mitigate some environmental effects of the residential use, but they cannot provide a justification for it.
21. The appellant has provided examples of nearby sites with caravans stationed on them, apparently in residential use. However, no information on the planning status of any site, or when residential use was instituted, has been provided by either party. As such, I do not know whether, if any permission was granted, it was in the context of the planning policies relevant to this appeal or because of a demonstrated rural business need. For these reasons, I cannot attach significant weight to those examples.
22. Reference has also been made to land on the opposite side of Warmfield Lane where waste disposal appears to be carried out. No evidence of this site's planning status has been provided, so I am unable to determine whether it lends any support to the appellant's case.
23. Compliance with the notice would result in the appellant losing his home, something likely to cause significant disruption to him and his wife. This would interfere with the rights afforded by Article 8 of the European Convention on Human Rights ("the ECHR") and Article 1 of the First Protocol to the ECHR, as incorporated by the Human Rights Act 1998. Those rights are qualified; meaning they may be interfered with provided such interference is proportionate and to a legitimate end.
24. There are benefits to the appellant's health from being able to live away from noise and neighbours. His wife is his main carer, and she also cares for other relatives, including her father-in-law who lives nearby. For these and other reasons it would clearly be in the appellant's best interests to remain at the site. However, it has not been demonstrated that an appropriate living

environment could not be achieved elsewhere, with no harm to the GB arising from inappropriate development.

Whether very special circumstances justify the development

25. For the reasons given, the change of use and operational development are inappropriate development and harmful to the openness of the GB and this carries substantial weight. Paragraph 148 of the Framework confirms that the very special circumstances needed to allow inappropriate development in the GB will not exist unless the potential harm to the GB by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
26. No rural business need that would justify an exception to the strict control of development within the GB has been identified. There is conflict with Wakefield Core Strategy policies CS1 and CS12 and Part 13 of the Framework.
27. The absence of harm to landscape character and following sustainable principles are neutral in the overall balance and neither weigh for or against. For the reasons given I can only afford limited weight to most of the considerations that have been advanced, including the possibility of removing the shipping container, other sites in the area and the needs of the rural business.
28. While I have given significant weight to the appellant's human rights, the advanced considerations in support do not, individually or cumulatively, on balance, clearly outweigh the harm to the GB, which I must afford substantial weight. Consequently, the very special circumstances necessary to justify the development do not exist. As such, any adverse impact on the appellant's human rights would be a proportionate response.
29. Accordingly, the appeal on ground (a) should not succeed.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.
31. The factors identified in paragraph 24 above may limit the appellant's options for suitable alternative accommodation, which could prolong his search. However, and in the absence of an appeal on ground (g)¹ I cannot consider any implications of that. While I am aware of the power afforded by section 173A(1)(b) of the Act to extend the period for compliance, that would be entirely at the Council's discretion.

Formal Decision

32. It is directed that the notice is varied in section 5 ii) by the deletion of the words "demolition waste materials" and the substitution of the words "waste materials arising from the removal of those items".

¹ That any period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.

33. Subject to the variation, 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 Act.

Mark Harbottle

INSPECTOR