



Appeal Decision

Site visit made on 14 June 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/P1940/C/21/3289566

**Land on the northeast side of Bell Lane, Bedmond, Abbots Langley,
Hertfordshire WD5 0SQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Andrew Aston against an enforcement notice issued by Three Rivers District Council.
- The notice was issued on 22 November 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land from agriculture to a mixed use: for agriculture and: (1) for the retail sale and display of goods for sale (including but not limited to, fruit, citrus fruit, potatoes and vegetables, eggs, plants, ornaments, garden ornaments, pots, planters, Christmas decorations, compost, and hot and cold food and drink); and (2) for the stationing and/or storage of goods and materials (including but not limited to picnic benches, tables and chairs, traffics cones, wooden pallets, storage racks, gas canisters, portable toilet, miscellaneous metal objects, metal poles, metal sheets, metal profiles, metals racks) not stored or stationed in connection with the use of the land for agriculture; and (3) for the stationing and/or storage of temporary structures and vehicles (including but not limited to a food trailer and a shipping container) not used in connection with the use of the land for agriculture.
- The requirements of the notice are to: 1. Cease the use of the Land for the retail sale and display of goods for sale (including but not limited to citrus fruit, potatoes and vegetables, eggs, plants, ornaments, garden ornaments, pots, planters, Christmas decorations, compost and hot and cold food and drink). 2. Cease the use of the land for the stationing and/or storage of goods, materials and items (including but not limited to picnic benches, tables and chairs, traffic cones, wooden pallets, storage racks, gas canisters, portable toilet, miscellaneous metal objects, metal poles, metal sheets, metal profiles, metal racks). 3. Cease the use of the Land for the stationing and/or storage of temporary structures and vehicles on the Land. 4. Remove from the Land all goods present on the Land for retail sale and display purposes. 5. Remove from the Land all other goods, materials and items present on the land. 6. Remove from the Land all vehicles and temporary structures present on the Land. 7. Remove the food trailer (the approximate location is shown marked with an "X" on the attached Site Map) from the Land. 8 Remove the shipping container (the approximate location of which is shown marked with a "Y" on the attached Site Map) from the land. 9. Remove the covered structure comprised of scaffolding poles and plastic roof sheeting and concrete base (the approximate location of which is shown marked with a "Z" on the attached Site Map) from the Land. 10. Following the removal of the concrete base, re-seed that part of the Land formerly occupied by the base with the native grass seed mix. 11. Remove the hard-standing laid on the Land (the approximate extent of which is shown washed blue on the attached site plan Site Map) and all other associated materials present on the Land used in its construction. 12. Following the removal of the hard-standing re-seed that part of the land shown washed blue on the site map with a native grass seed mix.
- The period for compliance with the requirements is: 2 (two) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. 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.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 1 August 2023.

Decision

1. It is directed that the notice be corrected by deleting steps 1, 2 and 3 from section 5 'What you are required to do' and substituted with:

"1. Cease the mixed use of the site for the retail sale and display of goods for sale other than those grown on the land, and for the stationing and/or storage of structures, vehicles, materials and items which are not used in association with the agricultural use of the Land."
2. It is directed that the notice be varied by deleting steps 4, 5 and 6 from section 5 'What you are required to do' and substituted with:

"2. Remove from the Land: all goods present on the Land for retail sale and display purposes other than those grown on the land; and all other vehicles, structures, materials and items present on the land which are not used in association with the agricultural use of the Land."

And the remaining requirements re-numbered as follows:

 3. Remove the food trailer (the approximate location is shown marked with an "X" on the attached Site Map) from the Land.
 4. Remove the shipping container (the approximate location of which is shown marked with a "Y" on the attached Site Map) from the land.
 5. Remove the covered structure comprised of scaffolding poles and plastic roof sheeting and concrete base (the approximate location of which is shown marked with a "Z" on the attached Site Map) from the Land.
 6. Following the removal of the concrete base, re-seed that part of the Land formerly occupied by the base with the native grass seed mix.
 7. Remove the hard-standing laid on the Land (the approximate extent of which is shown washed blue on the attached site plan Site Map) and all other associated materials present on the Land used in its construction.
 8. Following the removal of the hard-standing re-seed that part of the land shown washed blue on the site map with a native grass seed mix.
3. Subject to these corrections and 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.

Matters concerning the notice

4. It is important for me to get the notice right where I can and in this case that means some amendments to the steps for compliance. It is open for me to vary and/or correct the notice in accordance with my powers under section 176(1)(a) of the Act. In this case, the requirements should square up with and follow logically from the allegation regarding what a notice may require under s173 of the Act to remedy the breach of planning control. The land is one planning unit in a single mixed use and to bring the steps into line with the allegation it is necessary to correct the requirements numbered 1, 2 and 3 to cease the 'mixed use'. It follows that the terms of the requirements at steps 4, 5 and 6 are varied

accordingly. By doing so, I consider that there will be no injustice to either party.

Preliminary matters

5. Reference is made to the shipping container which is sited on the land close to the access with Millhouse Lane. This does not form part of the notice.

Ground (c)

6. In an appeal on this ground the appellant must demonstrate that the matters alleged, if they occurred, do not constitute a breach of planning control. The burden of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probability. The notice alleges a change of use from agriculture to a mixed use for agriculture and the retail sale and display of goods, the stationing and storage of temporary structures, vehicles and goods not used in connection with the agricultural use of the land.
7. Section 55(2) of The Town & Country Planning Act provides that the use of land for the purposes of agriculture or forestry, and the use of any building occupied together with the land so used, is not development requiring planning permission.
8. The definition of agriculture as set out at section 336 of the Town and Country Planning Act 1990 (as amended) states: "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;"
9. The appellant submits that the use of the land for the sale of fresh fruit and vegetables began in 2020 and that a container (Y) was brought onto the land from which to sell the produce. Access via Mill House Lane allowed members of the public to come onto the site to buy produce. A new track was created to allow for a one-way system. The enterprise expanded through 2020 and into the first half of 2021 to include the sale of ornaments produced by the appellant's business and items such as garden furniture and gas canisters. Pumpkins and root vegetables were grown, and hens and ducks were housed on the land. A Christmas grotto was created in 2020 and Christmas decorations were sold. A shelter for a resident donkey, consisting of the concrete hardstanding and scaffolding poles with a roof covering, was constructed as part of the festivities. A second container (X) for the sale of hot food was subsequently brought onto the land and picnic benches and a portable toilet were provided for visitors.
10. While the appellant does not dispute the alleged breach of planning control, they consider that products grown on the land and their sale does not represent a breach of planning control. They also consider that the container used to sell fruit and vegetables would not be a breach of planning control if used in an ancillary way to sell produce grown on the land. That may indeed be the case, however, the appeal on ground (c) rests on the evidence presented relating to the period running up to and including the date when the notice was issued.

11. The notice was issued on 22 November 2021 and submissions from the Council include a series of photographs spanning a period from 7 May 2018, which capture aerial and ground views of the land prior to the alleged material change of use, up to the date of the notice. Except for the hens and ducks and their accommodation and the sale of vegetables grown on the land, the remaining matters as alleged are not an agricultural use of the land and are thus a breach of planning control. The purpose of the container (Y) was for the sale of a variety of fruit and vegetables and the photographs show much of this would have been brought on to the site instead of being grown on the land. The purpose of the food trailer was to provide refreshments to visitors and there is no evidence that the food sold from the trailer came from the land. It is also evident from the photographs that the shelter (Z) behind the container (Y) and the concrete base was erected in connection with the expanding retail use of the site and not solely for agricultural purposes.
12. The substantial evidence produced by the Council and the admissions from the appellant, show that while some produce has been grown on the land, produce/goods imported from elsewhere was a considerable proportion of what was retailed from the site. Thus, the retail element cannot be regarded as incidental to the agricultural use of the land. It goes well beyond what might be regarded as farm gate sales. Furthermore, the containers and shelter supported the retail use of the site and enabled storage of goods with no association with the agricultural use of the land. Although at the time of my visit, the site had been cleared of all goods, materials and vehicles, from the presented evidence and on the balance of probabilities, at the time the notice was issued a breach of planning control consisting of a material change of use of the land to the mixed use as alleged had occurred.
13. Therefore, the appeal on ground (c) does not succeed.

Ground (a) and the deemed planning application

Main Issues

14. These are:

- Whether the development constitutes inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, and the effect upon the openness of the Metropolitan Green Belt and the purposes of including land within it.
- The effect of the development on the character of the area.
- If it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether Inappropriate Development

15. Policy CP11 of the Three Rivers District Council Core Strategy (adopted October 2011) (CS) sets out that there will be a general presumption against development that would not preserve the openness of the Green Belt, or which

would conflict with the purpose of including land within it. Although the Core Strategy pre-dates the National Planning Policy Framework (the Framework) it is relatively consistent with the framework although it simply refers to a 'general presumption' against inappropriate development rather than setting out possible exceptions. Policy DM2 of the Development Management Policies Local Development Document (adopted July 2013) (DMP), which also pre-dates the Framework is silent on material change of use, but states that the construction of new buildings in the Green Belt is inappropriate with certain exceptions, some of which are set out in the policy. It provides that approval will not be given for new buildings in the Green Belt other than those specified in national policy, except in very special circumstances.

16. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and openness and permanence are stated as being the essential characteristics of Green Belts¹. Green Belts serve 5 purposes, one of which is to assist in safeguarding the countryside from encroachment². The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances³ which 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. Substantial weight is given to any harm to the Green Belt.
17. Certain forms of development are identified in the Framework which are not inappropriate, provided that they preserve the Green Belt's openness and do not conflict with the purposes of including land within it. In this latter category, under paragraph 150(e), one of the forms of development which may not be inappropriate is a material change in the use of land. The alleged breach of planning control is the material change of use of the land from agriculture to a mixed use. In this respect, and in line with the Framework paragraph 150(e), the use is not inappropriate development provided it preserves the visual and spatial openness of the Green Belt and the purposes of including land within it.
18. The mixed use of the land on what was formerly agricultural land in the countryside inevitably erodes the openness of the Green Belt. Where previously the site was used for agricultural purposes, urbanising features in the form of a new access track, static and moveable structures and equipment have, or had, been created, installed or brought onto the land to facilitate the change of use, and this encroached on the countryside. The development as a whole has a spatial dimension introducing built form into an area of once open field where there was previously no development.
19. While the site is mainly enclosed by woodland on three sides, it is open to the south and highly visible to many who live along Bell Lane. There would be further glimpses into the site from those using Millhouse Lane to the north. Although it is probable that longer distance views towards the site would be interrupted by the heavily wooded surrounding landscape. Nevertheless, the development is prominent from public vantage points, and thus there is an impact on the openness of the Green Belt. The container and scaffolding structure on the land inevitably reduce openness, particularly as they are centrally located on the land. Although cleared from the land at the time of my visit, photographs show how the land had been littered with goods for sale

¹ Paragraph 137

² Paragraph 138

³ Paragraph 147

adding to the overall reduction in openness and such a loss must be given substantial weight.

20. The material change of use of the land, as alleged in the notice, represents a noticeable encroachment of urban activity into agricultural land that would conflict with a main purpose of the Green Belt. The change of use introduced activity on the land through visitors and their cars, delivery vehicles and the erection and siting of paraphernalia associated with the use. None of which preserves the openness of the Green Belt. The effect of the development is that the use of the land conflicts with the fundamental aim of Green Belt policy⁴ which is to keep land permanently open. The mixed use is sufficient to amount to inappropriate development in the Green Belt, and one which harms openness, when considered against the provisions of the Framework.

The effect of the development on the character of the area.

21. The appeal site occupies open agricultural fields to the north of Bell Lane, an unmade no-through road to the east of the village of Bedmond. The land is enclosed by woodland to the west, north and east. Woodlands, a residential property sits to the east and there are a further two open fields which adjoin the site to the south. A hard surfaced track, which is bounded by a post and wire fence, crosses through the site to connect Bell Lane with Millhouse Lane. Residential properties front Bell Lane to the south.
22. The use of the agricultural land for retail and storage has introduced an alien commercial element in the countryside. The mixed use of the land fails to conserve or enhance the character and quality of the area. It has an adverse visual impact on the appearance of the area and the urbanising form does not preserve the rural character of the area. In this respect the development conflicts with Policy CP12 of the CS.

Other considerations

23. The appellant submits that container Y is required for purposes ancillary to the existing/proposed agricultural use of the land. Although it appears that it is the appellant's intention to grow an increasing amount of produce on the land and to sell from the site, there is nothing substantive before me to demonstrate that that use has begun or that there is a credible likelihood of that happening. Thus, I consider that there is limited justification for keeping the container on the land for a future use. It is also submitted that structure Z is required to provide shelter for the donkey. While the donkey may benefit from the shelter, it goes way beyond what is needed. Shelter could be provided by a significantly smaller moveable field shelter. Overall, these other considerations put forward carry only a limited amount of weight in favour.

Planning Balance

24. The development constitutes inappropriate development and erodes the openness which causes harm to the Green Belt. This is a matter to which substantial weight is given. The development represents encroachment, conflicting with at least one purpose for designating land inside the Green Belt, which is a serious planning objection. I have also identified conflict with Policy CP12 to which adds moderate weight against the development.

⁴ Paragraph 137

25. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to advise that substantial weight should be 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.
26. The other considerations identified do not clearly outweigh the substantial weight that I give to the harm to the Green Belt arising from the development, by reason of inappropriateness, the harm to openness and one of the purposes for including land within the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion on ground (a) and the deemed planning application

27. For the reasons set out above, the development conflicts with the development plan, when read as a whole and the Framework and there are no material considerations to indicate that a decision should be taken otherwise. Having considered all other matters raised including some local support for the proposal, I conclude that the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

The appeal on ground (f)

28. An appeal on ground (f) is that the requirements of the notice are excessive. The notice requires that the mixed use of the land subject of the alleged breach ceases, and all associated materials, structures and vehicles are removed from the land. On that basis, the purpose of the notice under section 173(4)(a) of the Act is to remedy the breach of planning control.
29. The appellant argues that the requirements of the notice should be amended so that lawful agricultural activities are not prohibited, and the structure, concrete base and container should remain on site for future agricultural purposes. They also consider that as permitted development rights exist under Schedule 3, Part 6, Class B of The Town and Country Planning (General Permitted Development) Order 2015 (as amended), these elements should be removed from the requirements.
30. Where a notice alleges a material change of use and requires that certain works are removed, those works must have been integral to or part and parcel of the making of the material change of use. Established caselaw in *Murfitt*⁵ provides that a notice concerned with a material change of use may not only require the removal of works which would otherwise be immune, but also the removal of those which might have been permitted development if they had not been constructed to facilitate the alleged use.
31. The evidence provided has demonstrated that the structure, concrete base and the container were all constructed or brought onto the site to enable or facilitate the material change of use of the land from the outset. Consequently, the notice may require the removal of such works. Following the removal of works, the notice requires areas to be re-seeded. This accords with s173(4) whereby the land is restored to its condition before the breach took place and is therefore not excessive.

⁵ *Murfitt v SSE* [1980] JPL 598

32. The agricultural use of the land is not development and there is no requirement to cease this element of the use. The steps required to be taken to comply with the notice have been corrected to acknowledge the right to revert to the agricultural use and to not prohibit sales, stationing or storage of items, goods, vehicles or structures in association with the agricultural use. By varying the requirements to remove non-agricultural 'items' from the notice also aids clarity regarding what is not precluded.
33. Given that the requirements, as amended, go no further than requiring the appellant to undo what has been done, they cannot exceed what is necessary to fully remedy the breach of planning control. Accordingly, there is partial success on the appeal on ground (f).

S A Hanson

INSPECTOR