



Appeal Decision

Site visit made on 4 December 2023

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30th January 2024

Appeal Ref: APP/P1805/C/23/3326094

Land at the junction of Sugarbrook Lane and Stoke Pound Lane, Stoke Pound, Bromsgrove B60 4LH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Paul Jones against an enforcement notice issued by Bromsgrove District Council.
- The notice, ref 21/00298/INV, was issued on 13 June 2023.
- The breach of planning control as alleged in the notice is (a) Without planning permission, the material change of use of the Land from use for agriculture to a mixed use comprising agriculture and the storage of (i) a metal shipping container – located in the approximate position shown by the green box at Appendix 4; (ii) a portacabin – location in the approximate position shown by the blue box at Appendix 4; (iii) a horsebox – location in the approximate position shown by the orange box at Appendix 4; (iv) building materials; and (v) waste materials comprising of (but not limited to) construction waste, a 'Biffa' waste bin, a toilet and wooden pallets; and (b) Without planning permission, the carrying out of operational development on the Land comprising (i) the creation of an area of hardstanding located in the approximate position shown by the yellow dashed line at Appendix 4; and (ii) the installation of floodlighting.
- The requirements of the notice are to: (a) Cease the use of the Land for the storage of (i) a metal shipping container; (ii) a portacabin; (iii) a horsebox; (iv) building materials; and (v) waste materials comprising of (but not limited to) construction waste, a 'Biffa' waste bin, a toilet and wooden pallets; (b) Permanently remove from the Land: (i) the metal shipping container; (ii) a portacabin; (iii) a horsebox; (iv) building materials; and (v) waste materials comprising of (but not limited to) construction waste, a 'Biffa' waste bin, a toilet and wooden pallets; (c) Break up all components of the hardstanding and remove from the Land all debris and materials resulting from compliance with this step 5c; (d) Disconnect and remove all components of floodlighting from the Land; and (e) Restore the Land to agricultural pasture – its condition immediately before the breaches took place.
- The periods for compliance with the requirements are: Steps 5(a) and (b) – 6 weeks from the date on which the notice takes effect; Steps 5(c) and (d) – 8 weeks from the date on which the notice takes effect; and 5(e) – 12 weeks from the date on which the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (1990 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 Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal is brought on ground (a) only, being that planning permission should be granted for the matters alleged in the enforcement notice (EN). The

appellant's appeal on ground (a) relates solely to the following elements of the matters alleged:

- (a) Without planning permission, the material change of use of the Land from use for agriculture to a mixed use comprising agriculture and the storage of (i) a metal shipping container – located in the approximate position shown by the green box at Appendix 4; and (iii) a horsebox – located in the approximate position shown by the orange box at Appendix 4; and
 - (b) Without planning permission, the carrying out of operational development on the Land comprising (i) the creation of an area of hardstanding located in the approximate position shown by the yellow dashed line at Appendix 4.
2. The portacabin, building materials, waste materials and floodlighting alleged in the EN have all been removed from the site, and the appellant has confirmed that planning permission is not sought for these. It follows that the EN will be at least partly upheld. Consideration of the appeal is therefore confined to those elements of the matters alleged set out at paragraphs 1(a) and (b) of this decision. References to "development" should be construed accordingly.
3. The appellant says that the shipping container and horsebox provide storage space for animal feed and equipment. Whilst such use does have agricultural connotations, the appellant has not contested the allegation itself, nor sought to argue that a material change of use has not occurred, nor that permission is not required. Irrespective of how they may be used, I have therefore proceeded on the basis that storage of these structures does constitute a MCU from agricultural use to a mixed agricultural and storage use. This approach is consistent with my own observations during site visit, as storage of these structures was clearly evident.
4. Since submission of the appeal, the National Planning Policy Framework (2021) has twice been superseded. Whilst some relevant paragraph numbers of the Framework have changed, I am satisfied that the updates do not materially affect its substantive content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the latest version, published in December 2023 (Framework).
5. The Council's reasons for issuing the EN, which are set out at paragraph 4 of the EN, have helped inform the main issues with regards to the appeal.

Main Issues

6. The main issues are:
- (a) whether the development represents inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies, including its effect on openness;
 - (b) whether the development preserves or enhances the character or appearance of the Worcester and Birmingham Canal Conservation Area;
 - (c) whether the development preserves or enhances the setting of a nearby grade II listed bridge; and

- (d) whether any 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 required to justify the development.

Reasons

Inappropriate Development - MCU

7. The appeal site is located within the Green Belt. The Framework is explicit that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
8. Paragraph 154 of the Framework sets out a number of exceptions where the construction of new buildings within the Green Belt may not be considered inappropriate. The appellant contends that both the shipping container and the horsebox would fall within these exceptions, as paragraph 154(a) provides an exception for buildings for agriculture and forestry. This is on the basis that both structures are used to store feed and equipment associated with the keeping of chickens and sheep.
9. Whilst I note the appellant's argument, and notwithstanding the Council's position on this point, the erection of buildings within the Green Belt, for which there are exceptions under paragraph 154, is not what is alleged in the notice. Instead, the notice alleges a material change of use (MCU) of the appeal site from agricultural land to a mixed-use comprising agriculture and the storage of various items, including both the shipping container and the horsebox. It is the MCU to include this storage use which is key, as opposed to any operational development comprising the erection of new buildings. This is important, as any planning permission granted under ground (a) would be for development as described in the matters alleged in the EN. The exception under paragraph 154(a) of the Framework would therefore not be applicable to any part of the development.
10. Nonetheless, paragraph 155 of the Framework provides 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. Paragraph 155(e) includes such an exception for material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). Whether or not the MCU to include storage use is or is not inappropriate, at least in part, could therefore hinge on the development's effect on openness.
11. The metal shipping container faces the access to the property, and is significant in height, width and depth. Although the horsebox is more modest, it is nonetheless a tall structure, located just to the east of the access. Together, the two structures occupy a meaningful part of the appeal site, particularly around its access, and spatially, result in some loss of openness to the Green Belt.
12. Given the proximity of the shipping container to the site's access, it is clearly visible from Stoke Pound Road to the south. Whilst much of the horsebox is screened by hedgerow, its proximity to the front boundary means it can be

seen in glimpsed views through the hedgerow. These factors mean that the outbuildings also result in some loss of visual openness.

13. Given the loss of openness arising from the storage of the shipping container and the horsebox, the MCU of the site to include the storage of these structures cannot be said to preserve the openness of the Green Belt. In turn, this storage use conflicts with the overarching aim of the Green Belt, to keep land permanently open. The MCU would therefore not fall within the exception under paragraph 155(e) of the Framework.
14. When assessed against the provisions of the Framework, this element of the development therefore represents inappropriate development in the Green Belt. The development would also be deemed inappropriate when assessed against Policy BDP4 of the Bromsgrove District Plan (2017) (District Plan), which is consistent with the provisions of the Framework in terms of approach to development within the Green Belt.
15. I should also highlight the recent Kingston judgment¹, in which it was held that for a use to fall within the paragraph 155(e) exception, it should be “*very closely aligned to the examples given*” (those examples being “use for outdoor sport or recreation, or for cemeteries and burial grounds”). Given that a storage use would not closely align with these cited examples, it is likely that the alleged use of the site would fall foul of the paragraph 155(e) exception in any event.

Inappropriate Development - Hardstanding

16. In terms of the creation of hardstanding, this would constitute an engineering operation, for which there may be an exception under paragraph 155(b) of the Framework. As above, this exception will only apply if the engineering operation preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The purposes of the Green Belt are listed under paragraph 143, and include safeguarding the countryside from encroachment.
17. In this instance, the hardstanding, which comprises gravel punctuated by grass and moss, is situated in the southern corner of the appeal site and extends from the site access to the shipping container and the horsebox. In the context of the site’s lawful agricultural use, the impact of the hardstanding on the site’s openness is very limited, as the ground level is broadly left unchanged. Its informal character also allows it to be perceived as part of the wider field, without appearing to unduly encroach upon its wider countryside setting. When considered in isolation, the hardstanding therefore reflects the purpose of the Green Belt identified above, without undermining the site’s openness.
18. The hardstanding would therefore fall within the exception under paragraph 155(b) of the Framework, and this element of the matters alleged would not be inappropriate development within the Green Belt. In this regard, it would also be consistent with Policy BDP4 of the District Plan, which reflects the Green Belt objectives of the Framework. However, this finding is independent of my conclusions regarding heritage harm, as set out below.

¹ Royal Borough of Kingston Upon Thames v Secretary of State for Levelling Up, Housing and Communities & Anor [2023] EWHC 2055 (Admin)

Conservation Area

19. The appeal site comprises a large field, approximately 0.34ha in area, which is located to the western side of the junction of Stoke Pound Lane, Sugarbrook Lane and Copyholt Lane. The site is within the Worcester and Birmingham Canal Conservation Area (CA), with the canal itself running alongside the site's north-western boundary. The land is a registered agricultural holding, which is reflective of its rural character and surroundings.
20. The CA extends along the canal from the Southern Portal of Tardebigge Tunnel to Bridge 41 at Astwood Lane, and for most of its length, it primarily comprises the canal itself and adjoining towpath. However, at various points it extends further afield, including to the historic hamlet of Stoke Prior, in which the appeal site is located. This stretch of the CA is noted for its rural environment, with the CA's Character Appraisal² highlighting that *"the canal's long and sinuous form cuts a swathe through the rural environment, notably the stretch from Tardebigge to Stoke Wharf which has changed little since it was constructed at the beginning of the 19th century"*. As previously agricultural land which abuts the canal's towpath, the appeal site makes an important contribution to these rural credentials of the CA.
21. The storage of the metal shipping container, which is utilitarian in character, introduces an industrial appearance to the appeal site, which undermines the rural tranquillity of its surroundings. Whilst the horsebox more closely reflects the site's rural character, it still adds clutter to the entrance of the site, which exacerbates this harmful impact. The creation of hardstanding around the site access further detracts from the site's verdant quality, although its impact in this regard is minor.
22. Together, these factors harm the character and appearance of the CA, and detract from its overarching significance. Whilst I consider this harm to be less than substantial, as it is localised to a small part of the CA, paragraph 205 of the Framework is clear that great weight should be given to a heritage asset's conservation (the heritage asset being the CA), irrespective of whether any harm is less than substantial or otherwise. Paragraph 208 of the Framework goes on to say that *"where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal"*.
23. In terms of benefits, the shipping container and horsebox are understood to provide storage space for animal feed and equipment, in conjunction with the use of the land for the keeping of chickens and sheep. However, the deemed planning application under ground (a) is for the mixed use of land including the storage of the shipping container and the horsebox in their own right, irrespective of what may be stored within them. This benefit is therefore limited in relevance. Nonetheless, any public benefit associated with the agricultural use of the structures would be minor in any event, given the small-scale of the site. In terms of the hardstanding, whilst this helps facilitate a parking and turning area within the appeal site which would benefit users of the site, it is unlikely to be of any meaningful public benefit. Taken together, these benefits would not be sufficient to outweigh the harm to the CA.

² Worcester and Birmingham Canal, Conservation Area Character Appraisal and Conservation Management Plan

24. The development therefore fails to preserve the character or appearance of the CA. In turn, the development conflicts with Policy BDP20 of the District Plan, which seeks to safeguard the district's heritage assets and their significance. As noted above, it also conflicts with the heritage provisions of the Framework. In reaching this conclusion, I have also had special regard to the desirability of preserving or enhancing the character or appearance of the CA, in accordance with my statutory duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Listed Building

25. The northern side of the appeal site also extends to Bridge No. 48 along the canal, which is grade II listed³. Much of the significance of this bridge again derives from its surrounding rural setting. Given the proximity of the appeal site to this bridge, its agricultural character contributes to this rural setting. As with the CA, the combined impact of the development undermines the rural credentials of the site and its surroundings, which similarly harms the setting of this listed bridge.
26. Whilst I appreciate the northern boundary of the site is currently screened by mature hedgerow which helps to limit the intervisibility between the appeal site and the bridge, there are no guarantees that this screening will remain in situ longer term. It therefore does not change my overall conclusions with regard to harm to the setting of the bridge. Whilst again, I consider the harm to be less than substantial, as above, there are no public benefits which would outweigh the great weight which must be attributed to this harm.
27. The development therefore fails to preserve the setting of the listed bridge, and again conflicts with Policy BDP20 of the District Plan and the heritage provisions of the Framework. In reaching this conclusion, I have had special regard to the desirability of preserving this listed building and its setting, in line with my duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Considerations

28. As per the Framework, the alleged MCU constitutes inappropriate development within the Green Belt. By definition, it is therefore harmful, and substantial weight must be attributed to this harm. I have also found that the development (as a whole) causes less than substantial harm to the Worcester and Birmingham Canal Conservation Area and the setting of the nearby listed bridge.
29. As mentioned, whilst the structures provide storage space for feed and other equipment associated with the keeping of chickens and a small number of sheep, any potential public benefit arising from this agricultural use would be limited. This benefit is also limited in relevance, as I am mainly concerned with the storage of the structures in themselves (as opposed to what may be stored within them). The benefit attributed to the turning space is similarly minor in nature. No other public benefits have been identified.
30. Consequently, there are no other considerations in this case which would clearly outweigh the harm by reason of inappropriateness, and the other harms

³ List Entry Number: 1167835

identified. In turn, the very special circumstances necessary to justify the development do not exist in this instance.

31. The development therefore conflicts with paragraph 152 of the Framework, which says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. As outlined above, the development also conflicts with Policies BDP4 and BDP20 of the District Plan.

Other Matters

32. The appellant has expressed a willingness to clad the shipping container to help mitigate against its impact. However, irrespective of such cladding, the development would remain inappropriate development within the Green Belt, which fails to properly preserve its openness. Cladding would therefore not overcome the identified harm.

Conclusion

33. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

34. 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.

James Blackwell

INSPECTOR