



Appeal Decisions

Site visit made on 5 March 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Appeal A Ref: APP/Q3630/C/23/3319879

Appeal B Ref: APP/Q3630/C/23/3319880

**Part of Land at Thynne Lodge, Green Lane, Staines-Upon-Thames
TW18 3LX**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeals are made by Mr William John (Appeal A) and Mrs Genty Smith (Appeal B) against an enforcement notice issued by Runnymede Borough Council.
- The notice was issued on 1 March 2023.
- The breach of planning control as alleged in the notice is, without planning permission:
 - 1) The material change of use of the Land and buildings from agriculture to a mixed use of storage (B8) and light industrial (B2); and
 - 2) The erection of buildings hatched blue on the attached plan ("Plan B").
- The requirements of the notice are to:
 - 5.1 Cease using the Land and buildings (within the red edged area shown on the attached Plan A) for storage (B8) and light industrial (B2) purposes.
 - 5.2 Demolish the buildings (as hatched in blue on the attached Plan B).
 - 5.3 Remove all resultant waste and other material from the Land.
 - 5.4 Return the Land to agricultural use."
- The period for compliance with the requirements is six (6) months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f), and (g) of the Act. Since Appeal A 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 is proceeding on the grounds set out in section 174(2)(f) and (g) of the Act.

Decision

1. It is directed that the enforcement notice is corrected as follows:
 - In section 3, 'The matters which appear to constitute a breach of planning control', in point 1), delete the words "(B8) and light industrial (B2)", and substitute the words "(Use Class B8) and light industrial (Use Class E)".
 - In section 5, 'What you are required to do', in point 5.1, delete the words "(B8) and light industrial (B2)", and substitute the words "(Use Class B8) and light industrial (Use Class E)".
2. It is directed that the enforcement notice is varied as follows:
 - In section 6, 'Time for compliance', delete the words "six (6)", and substitute the words "twelve (12)".
3. Subject to these corrections and variation Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

The Notice

4. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The appellant notes that under the Town and Country Planning (Use Classes) (England) Order (as amended), 'light industrial' use would fall within Use Class E (giii - any industrial process, which can be carried out in any residential area without causing detriment to the amenity of the area) and not within Use Class B2 (general industrial) as stated in the notice.
5. The Council acknowledge they made an error in the notice and that it should state Use Class E rather than B2. Both parties were aware of this matter and produced their statements accordingly. I am therefore satisfied that I can correct the notice, as set out in the decision, without causing injustice.

Preliminary matters

6. Appeal A and Appeal B initially included Ground (d), but this ground of appeal were subsequently withdrawal. There is no dispute between the parties that the 7 buildings identified on the Plan attached to the notice have been in situ in their current form for less than 4 years and in their current use for less than 10 years.
7. The Runnymede Borough Council 2030 Local Plan (Adopted July 2020) (LP) states that the Council will exercise strict control over development within the Green Belt in accordance with national guidance. National planning policy regarding the Green Belt is set out in the National Planning Policy Framework (the Framework), which was updated in late 2023. Green Belt policy within the Framework did not change, other than paragraph reference numbers.
8. Two applications seeking retrospective planning permission for a change of use of land to the rear of Thynne Lodge from agricultural to B8 Storage have previously been refused. The first (reference RU.20/0627) included 9 outbuildings and the second (reference RU.21/0446) included 7 outbuildings.

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

9. An appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation, as corrected. Hence, the development for which planning permission is sought is the material change of use of the Land and buildings from agriculture to a mixed use of storage (Use Class B8) and light industrial (Use Class E), and the erection of buildings hatched blue on the plan attached to the notice.
10. The site to which the deemed planning application relates is within the Green Belt. This is not in dispute. The Framework specifies that development within the Green Belt is inappropriate, with certain specified exceptions, and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved, except in very special circumstances.

Main Issues

11. The main issues are:

- Whether the development is inappropriate development in the Green Belt, having regard to the Framework and any relevant Local Plan policies;
- Whether the site is an appropriate location for the development with regards to flood risk;
- The effect of the development on the living conditions of occupants of neighbouring dwellings; and
- If the development is found to be 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 necessary to justify the development.

Reasons

Whether the development is inappropriate development in the Green Belt

12. Framework paragraph 154 sets out exceptions, whereby new buildings in the Green Belt would not be inappropriate. Paragraph 154d allows for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. This exception is reflected in Policy EE14 of the LP, which also sets out that development should maintain the openness of the Green Belt and clarifies that it is the lawful use of the building which will be taken into account.
13. The Council state that the last lawful use of the land and its buildings was agricultural. The appellant does not contest this but states that the site and the buildings had been used for storage, prior to the old buildings being removed. No evidence has been provided to substantiate this and even if the previous buildings had been used for storage and light industrial use prior to removal and replacement, this would not have been the lawful use. Therefore, the new buildings are not in the same use as the previous buildings.
14. Photographs provided by the appellant show that previously the site contained a number of buildings which were significantly dilapidated. They were of a simple blockwork and sheet roof construction with predominantly open frontages. The figures provided by the appellant (in drawing ref 2105A-OV1) show the total built area has decreased, but in calculating this, it seems to include parts of the original footprint which were surrounded by low walls but had no roof covering. The figures show that the total building gross external area has increased by what I consider to be a significant amount. In addition, the replacement buildings are significantly higher, with the appellant figures showing the average height increasing from 2.25m to 3.45m. This increase in height has resulted in much bulkier buildings with a greater volume.
15. On balance, in my view, the combination of the changes in building footprint, height and volume, particularly considering the number of buildings, has resulted in the replacement buildings being materially larger than the buildings they replaced.
16. The openness of the Green Belt has both a spatial and visual aspect. From my site visit it was evident that the replacement buildings are fully enclosed.

Consequently, the bulk of the appeal buildings has a greater impact on visual openness than the quite open fronted buildings it replaced. The increase in overall building volume has a greater impact on the spatial aspect of openness. Therefore, the openness of the Green Belt has not been maintained.

17. On the basis of the above, the replacement buildings are not in the same use as the previous lawful use, are materially larger than the buildings they replaced, and do not maintain the openness of the Green Belt. Therefore, the exception at Framework paragraph 154d does not apply and the buildings fail to comply with Policy EE14 of the LP.
18. In reaching this conclusion I have considered the other applications referred to by the appellant. In both cases the context and the development was materially different¹. I have assessed this development on its own context and effects.
19. I have also considered the exception at Framework paragraph 154g, which allows for limited infilling or the partial or complete redevelopment of previously developed land, subject to the impact on openness. This exception is reflected in Policy EE17 of the LP. However, the Framework explicitly excludes land that was last occupied by agricultural buildings (which is the last lawful use of the site) from the definition of previously developed land. Therefore, the site is not classed as previously developed land, so the exception at paragraph 154g does not apply and the building fails to comply with Policy EE17 of the LP.
20. Framework paragraph 155e sets out that material changes in the use of land are not inappropriate in the Green Belt, provided they preserve openness and do not conflict with the purposes of including land within it. This exception is reflected in Policy EE19 of the LP.
21. The use of the site for storage and light industrial use involves some outside storage. The use also results in a number of vehicles accessing and being parked on the site for parts of the day. Together, these elements mean the character and appearance of the site is much more industrial than it would have been for its lawful agricultural use. Therefore, the unauthorised use fails to safeguard the countryside from encroachment, which is one of the purposes of the Green Belt.
22. Overall, the building and the use do not meet any of the exceptions set out in the Framework and fail to comply with relevant Green Belt policies of the LP. Therefore, the building and the use constitute inappropriate development in the Green Belt and are, by definition, harmful to the Green Belt.

Flood risk

23. It is common ground that the site is located within Flood Zone 3b and that both the previous and current use of the site class as less vulnerable forms of development. Flood Zone 3b is the functional floodplain, where water has to flow or be stored in times of flood. It is land at the highest risk of flooding. The Planning Practice Guidance² (PPG) -) sets out that development classed as less vulnerable should not be permitted in Zone 3b.

¹ RU.22/0841 – Replacement building only partly within green belt; small area increase; buildings in the same use.
RU.21/1804 - Increase in volume offset by reduction in hardstanding and reduction in parking and storage.

² Paragraph: 079 Reference ID: 7-079-20220825

24. The Environment Agency were consulted on application reference RU.21/0446 which sought permission to retain the development. They noted that the flood risk assessment did not comply with the requirements for site-specific flood risk assessments and did not adequately assess the developments flood risk, in particular, whether it would increase flood risk elsewhere. They also noted that based on the provided photographs of the previous buildings, they could be seen as floodable structures so cannot be used to offset floodplain storage volumes and be used within compensation calculations. They objected to the development in principle.
25. The definition of Flood Zone 3b in the Runnymede 2030 Strategic Flood Risk Assessment, sets out that in developed areas, existing building footprints, where it can be demonstrated that they exclude floodwater, will not be defined as functional floodplain and the planning requirements associated with Flood Zone 3B will not apply. From the provided photographs, it is evident that the previous buildings, which have been removed and replaced, would not have excluded floodwater, so would have been defined as part of the functional floodplain. The replacement buildings are not on a like for like basis. I therefore consider the buildings to be bound by the requirements of Flood Zone 3b.
26. In Flood Zones 2 and 3, both the Framework and Policy EE13 of the LP require the use of a sequential test, whereby a sequential, risk based approach to the location of development is applied, with development not being permitted if there are reasonably available sites, appropriate for the proposed development, in areas with a lower risk of flooding. The sequential test may not need to be applied to the change of use, as both the previous and current use are in the less vulnerable classification. However, as set out above, the replacement buildings which support and enable the use are subject to the Flood Zone 3b requirements, so the sequential test needs to be applied.
27. On the information made available to me with this appeal, I have insufficient evidence to allow me to conclude that reasonably available sites, appropriate for the development, in areas with a lower risk of flooding, have been investigated and ruled out. Therefore, it has not been demonstrated that the development cannot be directed towards land at lower risk of flooding. Consequently, the development fails the sequential test.
28. The Framework sets out that if it is not possible for development to be located in areas with a lower risk of flooding, the exception test may have to be applied. The exception test is therefore to be applied only if the sequential test has been passed, which is not the case here.
29. Notwithstanding this, even if the exception test were to be applied, to pass it the Framework requires the development to provide benefits to the community which outweigh the flood risk, and, for the development to be safe for its lifetime. I have been provided with no substantive details but assume that the development supports some local businesses as well as providing a useful resource for the appellants. The scale of any such benefits is small and private and not sufficient to outweigh the significant flood risk to which I must attach substantial weight. I have been presented with no details to allow me to conclude the building would be safe from flooding for its lifetime or that it would not increase flood risk elsewhere. Therefore, I am unable to conclude that the development would pass the exception text, even if it were to be applied following success at the sequential test.

30. The appellant notes that no people or animals would be on site overnight. They have also provided a flood risk statement which suggest that a flood risk management plan could be produced and 2 buildings could be amended to allow them to be floodable, resulting in an overall betterment to floodplain storage capacity. This may be the case, but no detail has been provided for consideration. Notwithstanding the above, these factors do not overcome the failure to pass the sequential test or the exception test and this cannot be overcome by imposing conditions.
31. It has not been demonstrated that the site is an appropriate location for the development with regards to flood risk. It therefore does not comply with Policy EE13 of the LP or Paragraphs 165 to 169 of the Framework, which seek to direct development away from areas at highest risk of flooding.

Living conditions of occupants of neighbouring dwellings

32. Access to the site is along a residential street, part of which is a poorly maintained private drive, and there are a few dwellings near to the site itself. The appellant Highways Technical Note (RPG – June 2023) states there were 56 vehicle movements associated with the appeal site across a period of 12 hours, compared to an estimated 6 to 8 for the previous agricultural use. Notwithstanding the TRICS database rates, and the vehicle movements of residential dwellings, I consider the change in vehicle movements as a result of the unauthorised use to be a material increase. This increase will inevitably have a detrimental impact on the amenity of the occupants of dwellings along Green Lane by way of general disturbance and has been the source of several objections to the development.
33. On the basis of the Noise Impact Assessment (HA Acoustics June 2023), I am satisfied that use of the site for storage and light industrial purposes would not increase noise, over and above an agricultural use, to such an extent as to have an unacceptable impact on surrounding residential occupants.
34. I conclude that, the development would have an unacceptable impact on the living conditions of occupants of neighbouring dwellings due to an increase in disturbance from vehicles. Consequently, I find the development conflicts with Policy EE1 of the LP, which seeks to ensure that development does not have an adverse impact on the amenities of occupiers of neighbouring properties.

Whether very special circumstances exist

35. The development is inappropriate development in the Green Belt, which by definition, is harmful. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
36. The development is not excessive in scale and is not visible from public vantage points. Consequently, I consider the degree of harm to openness and the purposes of including land in the Green Belt caused by the development to be modest. Notwithstanding this, in accordance with the Framework, I must attach substantial weight to any harm to the Green Belt. In addition, I have identified harm in terms of flood risk, which would be long lasting, so I must attach substantial weight to this harm. Disturbance to resident amenity caused by additional vehicles would be intermittent and I consider the impact to be modest, so ascribe it limited weight.

37. As set out in the flooding section, the scale of any benefits of the development are small and private, rather than public, so I can afford them only minimal weight in favour of the development.
38. Planning permission for a change of use could have been applied for prior to removing the previous buildings, but it was not. I have no evidence to suggest that had an application been made, it would have been granted. I do not consider this to be a valid fallback position and ascribe it no weight in favour of the development.
39. Therefore, these other considerations, taken together, do not clearly outweigh the harm to the Green Belt, and the other harm to flood risk and amenity. Consequently, the very special circumstances required to justify a grant of planning permission do not exist and the development conflicts with the Framework and the Local Plan.

Conclusion on ground (a) and the deemed planning application

40. I conclude that the development is inappropriate development in the Green Belt and very special circumstances do not exist, meaning the development conflicts with the Framework. The development also conflicts with Policies EE1, EE13, EE14, EE17 and EE19 of the LP and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. Therefore, the appeals on ground (a) fail and planning permission is refused.

Appeals A and B on ground (f)

41. An appeal on ground (f) is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The notice requirements in this case seek to remedy the breach of planning control. As set out above, I find the buildings and the use to be unacceptable. Therefore, allowing either the buildings or the use to remain would fail to remedy the breach.
42. While there were some buildings on site previously, they were dilapidated and have been demolished and replaced. Consequently, planning permission would be required to construct any buildings, even if they were the same as the buildings which were on site previously. No proposed scheme has been presented under this appeal.
43. The notice requires the 'buildings' to be demolished and removed. In so far as the base of the buildings is the same as the base of the previous buildings, the notice does not require the removal of the base. The notice does not specify the removal of boundary treatments.
44. Given the above, the required steps are not unreasonable. Anything short of these steps would not remedy the breach of planning control that the notice was issued to resolve. As such, the requirements are not excessive and the appeals on ground (f) fail.

Appeals A and B on ground (g)

45. An appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of 6 months after the notice takes effect.
46. The appellant has requested more time, to allow tenants to find and relocate to alternative sites. Their request for 2 years is excessive, bearing in mind the harm I have identified which needs to be addressed without undue delay. However, sufficient time is needed so that businesses are not unduly disrupted. In balancing the harm resulting from the breach of planning control against the needs of the appellant and their tenants, I consider it reasonable and proportionate to extend the compliance period to 12 months.
47. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to extend the compliance period to 12 months and the appeals on ground (g) succeed.

Conclusion

48. I conclude that the appeals on ground (a) should not succeed. I shall uphold the enforcement notice, with correction, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeals on ground (f) also fail. However, I conclude that the period for compliance with the notice falls short of what is reasonable. Therefore, I shall vary the period for compliance in the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

H Davies

INSPECTOR