



Appeal Decisions

Site visit made on 12 March 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Appeal A Ref: APP/K2230/C/22/3299987

Appeal B Ref: APP/K2230/C/22/3299988

Land to the west of Sole Street Station (known as the former Varnish Factory), Cobham, Gravesend, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). Appeal A is made by Palm Developments Ltd and Appeal B is made by Mr Ian Rich against an enforcement notice issued by Gravesham Borough Council.
- The notice was issued on 10 May 2022.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the material change of use of the Property from a vacant site to a site for the use of stationing of storage containers.
- The requirements of the notice are to:
 - (i) Cease the use of the Property for the stationing of storage containers
 - (ii) Remove all the storage containers from the Property along with all associated paraphernalia that facilitates the unauthorised use, including but not limited to:
 - (a) Vehicles and caravans
 - (b) Satellite dishes and aerials
 - (c) Lighting and CCTV equipment
 - (d) Automated intercom access system
 - (e) Portaloo
 - (f) Letterbox from entrance gates
 - (iii) Remove all resultant debris and associated materials generated by the unauthorised development and compliance with the above steps from the Property.
- The period for compliance with the requirements is: six calendar months.
- Appeals A and B were made on the ground set out in section 174(2)(f) of the Act. Appeal A was also made 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 was deemed to have been made under section 177(5) of the Act.

Summary decision: the enforcement notice is quashed

Appeal C Ref: APP/K2230/W/22/3295081

Former Norbond site, Sole Street, Cobham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Palm Developments Ltd against the decision of Gravesham Borough Council.
- The application Ref is 20200914.
- The development proposed is change of use for the stationing of storage containers for individual storage usage.

Summary decision: the appeal is dismissed

Preliminary Matters

1. The enforcement notice subject of appeals A and B refers to the use of land for the stationing of storage containers. That suggests that the land was being used solely for the stationing of storage containers, but not for storage within

them. However, it appears that they were being used for storage, as described in the application for planning permission subject of appeal C. I was able to see inside a few containers during my visit and, whilst one was empty, the others were clearly being used for storage purposes rather than simply being stationed on the land.

2. Under section 176 of the Act, I may correct any defect, error or misdescription in the enforcement notice, provided that the correction or variation will not cause injustice to the appellant or the local planning authority.
3. The enforcement notice refers to the breach of planning control being a material change of use. However, storage containers are substantial structures. As such, their location on the site may be a building operation if they were to meet the definition of a building. The matters that need to be considered are size, permanence and physical attachment.
4. Storage containers are of reasonable size, sufficient that they could be defined as a building. They are held down solely by their own weight and are, otherwise, not attached to the ground. I note reference in appeal C to the potential for a temporary planning permission; nevertheless, in appeals A and B I need to consider them as potentially remaining on the land permanently. As a result, they have a significant degree of permanence. I accept that they would not have been assembled on site, are not connected to services and are capable of being picked up and moved, without requiring demolition, on a vehicle, such as a Hiab Crane Truck. Nevertheless, I consider that their size, permanence and physical attachment is sufficient that the containers should be defined as buildings.
5. The requirements include the removal of paraphernalia associated with the use. Some of the paraphernalia listed on the notice is quite substantial, in particular the vehicles, satellite dishes and aerials. It is unclear how these relate to the use of the site for stationing of storage containers, or whether they would need to be removed given the use for which they have been brought to the site differs from the use described in the notice. I note that a portable office cabin has been brought onto the land and appears to serve as the office for the storage business. There are also a few trailers parked on the site, which do not appear to be specifically mentioned in the notice. This further indicates that the site is in a wider storage use than indicated on the notice.
6. On that basis, I consider that the description of the breach of planning control was incorrect. It should have treated the containers as buildings and specified their use, and the use of the site, for wider storage purposes.
7. Section 173(2) of the Act states that an enforcement notice must enable any person on whom a copy is served to know what the matters constituting the breach of planning control are. For the above reasons, the enforcement notice is unclear such that the person on whom this notice was served could not know what those matters were. I consider that to correct the notice would cause injustice to the appellant as they may have made their case differently on the appeal had the notice been issued in another form.
8. I have raised these issues during the course of the appeal and suggested that the notice may be invalid. I have addressed the comments of the parties.

9. It is not open to me to correct the errors in accordance with my powers under section 176(1) of the Act, since I have concluded injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2)(a) and (f) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Appeal C

Main Issues

10. The main issues are:

- Whether the development comprises inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- The effect of the development on the intrinsic character and beauty of the landscape;
- The effect of the development on the living conditions of occupiers of nearby dwellings with particular regard to light, noise and disturbance; and
- 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

Inappropriate development

11. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is given to any harm to the Green Belt. Policy CS02 of the Gravesham Local Plan Core Strategy (CS) supports development where it is compatible with national policies protecting the Green Belt. According to the Framework, the construction of new buildings is inappropriate in the Green Belt, subject to a number of exceptions, including the redevelopment of previously developed land that would not have a greater impact on the openness of the Green Belt than the existing development.
12. Even if the storage containers were not built development, the Framework states that other forms of development are also not inappropriate in the Green Belt. This includes material changes in the use of land, provided they preserve its openness and do not conflict with the purposes of including land within it.
13. The appeal site comprises hard surfaced areas that I understand may have contained buildings at some point in the past. It is clearly previously developed land. However, the site was essentially open prior to the storage containers having been brought onto the site.
14. The storage containers, portacabin, portaloos and other storage are spread over most of the site, with a passage between to allow access. This has affected the spatial openness of the site.
15. The site is surrounded by planting, including mature trees and newer planting. This restricts views into the site to some extent. Nevertheless, particularly in views from the nearby public footpath and footbridge over the railway, the containers are visible through the planting. Longer range views are also

possible in this relatively flat landscape, although the colour and size of the containers means they blend to some extent with the surrounding planting. The substantial planting on the railway side, along with woodland and rear garden boundaries of houses over the railway means visibility from the houses and railway is limited. Nevertheless, the storage containers do affect the visual openness of the site.

16. The storage containers, supporting infrastructure and their use has resulted in more substantial development encroaching into the Green Belt. As a result, the development conflicts with the purpose of the Green Belt relating to safeguarding the countryside from encroachment.
17. Given the effects on openness and conflicts with the purposes for including land within the Green Belt, the development does not fall within the above exceptions. As a result, I conclude that it comprises inappropriate development. It is contrary to Policy CS02 of the CS and the Framework that seek to prevent urban sprawl by keeping land permanently open.

Landscape

18. The site lies a short distance along the track from Sole Street Station and on the opposite side of the railway line from the settlement. It is surrounded to the other sides by open fields contained within a largely flat landscape, with long range views across the fields interspersed with woodland and sporadic small settlements. It is located within the Meopham Downs Character Area.
19. The development comprises storage containers, portacabin, portaloos and other paraphernalia on the existing concrete bases on the site. It is visible to varying degrees through the surrounding mature trees and more recent planting from the neighbouring fields, footbridge and development over the railway. Whilst the later planting will mature to further obscure views into the site, in comparison to the previous hardstanding it results in development visibly encroaching into the landscape. It is particularly visible in views from the footbridge and footpath across the adjacent field.
20. My attention has been drawn to potential noise and light effects on the surrounding landscape. Whilst light and noise can affect the tranquillity of rural areas, it is unlikely to cause additional material harm to the landscape in addition to the visual harm given the nature of the proposed use and location adjacent to the railway and a settlement.
21. For these reasons, I conclude that the development harms the intrinsic character and beauty of the landscape. As such, it is contrary to Policies CS12 and CS19 of the CS and the Framework that seek development to conserve, restore and enhance the natural environment and landscape.

Living conditions

22. The closest residential neighbours are located over the railway from the appeal site. To either side of the railway is mature tree planting.
23. Use for storage involves customers of the business visiting in vehicles to access their storage container to deliver or remove items. That involves a degree of noise as they move around the site and access the containers. Vehicles arriving after dark would also mean lights moving around the site and access route, as well as the site being lit for security and to enable access.

24. Vehicles accessing the storage use mainly do so during the day, when there is more background light, noise and disturbance, including from trains. As a result, there would be limited effects on neighbouring occupiers during the day.
25. The effects from light, noise and disturbance are likely to be more pronounced at night and this could lead to harmful effects on the living conditions of neighbours. Evidence from the appellant suggests limited use at night and light could be managed via sensors. I note the Council suggests a condition could be used to limit the hours of use, should I allow the appeal, and the appellant has accepted this. I consider that would overcome the effects of the development on living conditions of neighbouring occupiers.
26. For these reasons, I conclude that the development does not have a material effect on the living conditions of occupiers of nearby dwellings with particular regard to light, noise and disturbance, subject to a condition restricting the hours when access to the containers would be possible. As such, it does not conflict with Policy CS19 of the CS that seeks to safeguard the living conditions of occupiers of neighbouring dwellings.

Other Considerations

27. The appellant has suggested that this would be a temporary change of use for a period of three years. As a result, the Council have suggested a condition that could be attached to any consent to require the use to cease and the containers and other paraphernalia be removed at the end of that period. However, the harm identified to openness, conflict with the purposes of including land within the Green Belt and landscape would continue during that temporary period.
28. Reference has been made to previous appeals on the site dating from 2018, reference APP/K2230/W/18/3198193, and 2007, reference APP/K2230/A/07/2033469. That dating from 2018 was for a vehicle depot to be used for highway maintenance and traffic management works. The 2007 decision related to construction of commercial buildings and was determined against previous planning policies. Both differ from the development in this case. Nevertheless, I note that the conclusions relating to those developments in relation to whether the development is inappropriate within the Green Belt and in terms of landscape are similar to my conclusions in this case. Those developments involved larger vehicles and that they may have moved into and around the site overnight, so the considerations in terms of living conditions and tranquillity of the landscape differ.

Conclusion

29. I have found that the use for the stationing of storage containers for individual storage usage at the land to the west of Sole Street Station would be inappropriate development that would harm the openness of the Green Belt and conflict with the purposes of including land within it. In addition, it would harm the intrinsic character and beauty of the landscape. I have concluded that it does not harm the living conditions of neighbouring occupiers, but that is a neutral consideration.
30. For these reasons, the substantial weight to be given to Green Belt harm and any other harm is not clearly outweighed by other considerations, such as that the development would be temporary, sufficient to demonstrate very special

circumstances. Therefore, the proposal is contrary to Policies CS02 of the CS and the Framework that seek to protect the Green Belt from inappropriate development.

31. On the basis of the above considerations, I conclude that the appeal should be dismissed.

Formal Decisions

Appeals A and B

32. The enforcement notice is quashed.

Appeal C

33. The appeal is dismissed.

AJ Steen

INSPECTOR