



Appeal Decision

Site visit made on 5 March 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2024

Appeal Ref: APP/D5120/C/23/3318816

Land at Sidcup Conservative Sports and Social Club, Oxford Road, Sidcup, DA14 6LW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Gary Wright (Sidcup Conservatives Sports and Social Club) against an enforcement notice issued by the London Borough of Bexley.
 - The enforcement 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 from a private members social club, to a mixed use of the Land as a private members social club and a boxing gym and fitness studio, shown in the approximate location outlined in blue on the Plan attached to this Notice.
 - 2) The siting of three shipping containers on the Land, shown in the approximate location outlined in green on the Plan attached to this Notice.
 - The requirements of the notice are:
 - (1)(a) Discontinue the mixed use of the Land by ceasing the operation of the boxing gym and fitness studio carried out within the three (3) shipping containers shown in the approximate location, outlined in blue on the Plan attached to this Notice.
 - (1)(b) Remove those three (3) shipping containers, from the Land.
 - (2)(a) Remove the three (3) shipping containers, from the Land that are shown in the approximate location outlined in green on the Plan, attached to this Notice.
 - (2)(b) Return the land back to its condition prior to the unauthorised development taking place.
 - The periods for compliance with the requirements are:
 - (i) One (1) month to comply with the requirements set out in Section 5, (1) (a) of this Notice, from the date this Notice takes effect.
 - (ii) Four (4) months to comply with the requirements set out in Section 5 (1)(b) and Section 5(2)(a) and (b), from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) 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.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - The deletion of paragraph 3.1) and its substitution with 'The material change of use of the Land from a mixed use private members sports and social club, to a mixed use of the Land as a private members sports and social club and a boxing gym and fitness studio, facilitated by the amalgamation of three shipping containers, shown in the approximate location outlined in blue and hatched on the Plan attached to this Notice.'

- The deletion of paragraph 3.2) and its substitution with 'The siting of three additional shipping containers on the Land, shown in the approximate location outlined in green and cross-hatched on the Plan attached to this Notice.'
 - The deletion of requirement (1)(a) in section 5 and its substitution with 'Discontinue the mixed use of the Land by ceasing the operation of the boxing gym and fitness studio facilitated by the amalgamation of three (3) shipping containers shown in the approximate location, outlined in blue and hatched on the Plan attached to this Notice.'
 - The deletion of requirement 2(a) and its substitution with 'Remove the three (3) additional shipping containers from the Land that are shown in the approximate location outlined in green and cross-hatched on the Plan, attached to this Notice.'
 - Deleting sub-paragraphs (i) and (ii) in section 6 and their substitution with:
 - (i) 'Three months (3) to comply with the requirements set out in Section 5(1)(a) of this Notice, from the date this Notice takes effect.
 - (ii) Seven (7) months to comply with the requirements set out in Section 5(1)(b) from the date this Notice takes effect.
 - (iii) Four (4) months to comply with the requirements set out in Section 5(2)(a) from the date this Notice takes effect.
 - (iv) Seven (7) months to comply with the requirements set out in Section 5(2)(b) from the date this Notice takes effect.'
 - The substitution of the plan attached to the enforcement notice with the plan in Annex 1 to this decision.
2. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant's grounds of appeal document sets out a heading for ground (b). I have assumed that to be a typo, and should, as cited in the appeal form, be ground (c), because the arguments made are that there has not been a breach of planning control, rather than that the matters alleged have not occurred.
4. Since issuing the enforcement notice, the Council has adopted the Bexley Local Plan (26 April 2023) (LP). Unitary Development Plan Policies ENV4 and ENV39 and Core Strategy Policy CS01, cited in the reason for issuing the enforcement notice, have been replaced by LP Policies SP1, SP5 and SP8. Those changes to the development plan are explained in the Council's statement and the appellant has had opportunity to comment. For the avoidance of doubt, my decision is made on the basis of the prevailing development plan.
5. Since submission of the appeal, a revised version of the National Planning Policy Framework (the Framework) has also been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the policies most relevant to the appeal, I have not reverted to the parties for comment.

The Enforcement Notice

6. The enforcement notice is not as clear as it could be as to whether it relates to three or six containers. The second part of the allegation should therefore be corrected to make it clear it refers to three additional containers. It logically follows that corresponding requirement (2)(a) should also be corrected.
7. The blue and green areas on the plan, which differentiate the containers to the first and second part of the allegation, would also benefit from being clearer. Indeed, I had to zoom in on an electronic copy of the plan to make the distinction. I shall therefore correct the plan to make the blue and green areas more obvious and by hatching one and cross-hatching the other, so the areas are distinguishable even if the plan is copied in black and white. The corresponding references in the allegation and requirements should also be corrected accordingly.
8. I am able to make those corrections, which do not alter the substance of the notice, under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

The Appeal on Ground (c)

9. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control. The onus lies with the appellant to make his case on the balance of probabilities.
10. The land affected by the enforcement notice is described as Sidcup Conservative (should be Conservatives) Sports and Social Club. However, the first part of the allegation is described as the material change of use of the land from a private members social club to a mixed use of the land as a private members social club and a boxing gym and fitness studio. The word 'sports' is not included. Given that the largest land-take within the appeal site is a football pitch, with its associated terracing, dugouts and changing rooms, it should be.
11. The appeal site also includes a clubhouse and other buildings, as well as an area of surface car parking. The land is therefore already in mixed sports and social use, so the first part of the allegation should be corrected to reflect that fact.
12. It is within that context that the appellant disagrees that a change of use has taken place. It is argued that the land is established as a single planning unit that consists of a sports and social club and that its use for boxing, training or fitness work is an alternative sport that has not resulted in a material change in use class. By way of an example, the appellant argues that he could operate open air boxing and fitness classes on the football pitch and there would not be a material change in use; they would simply be alternative sports.
13. For the most part, I do not disagree with that reasoning, as the boxing gym and fitness studio are plainly sporting uses. Nevertheless, the football pitch, and the appellant's example of its use for open air boxing and fitness classes, fall within Class F.2(c) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), which comprises an area of or place for outdoor sport or recreation.

14. However, the boxing gym and fitness studio take place within the amalgamated floor space of three shipping containers. The use therefore falls within Class E(d) of the UCO, which is use for indoor sport, recreation or fitness, principally to visiting members of the public. The distinction between indoor and outdoor sports therefore results in the uses falling within a different use class.
15. However, that in itself does not mean that a change from one to the other amounts to development. The key issue is whether the change is material. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
16. The football pitch is unaffected by the boxing gym and fitness studio uses facilitated by the siting of containers positioned between the goal line and the car park. The gym uses therefore attract new and additional activity from users coming and going, whether that be on foot, cycle or by car.
17. The patterns of use are also likely to be significantly different to those associated with a football pitch. Indeed, it is not unusual for a gym to be used from early in the morning and into the evening, whereas a football pitch, particularly one without floodlights, is likely to be used much less frequently and only for matches and occasional training. The level of activity and use of the affected part of the land is therefore likely to be significantly different to that which took place previously.
18. Given the complaints received over noise and disturbance, the gym uses also result in different/additional off-site effects. Moreover, due to their size, design and siting at the edge of the football pitch, the facilitating containers also result in a change in the character and appearance of the land.
19. Consequently, the use of the land for a boxing gym and fitness studio, facilitated by the siting of the amalgamated containers, has resulted in a significant difference in the character of the activities from what had gone on previously as a matter of fact and degree. It follows that a material change of use has occurred, for which planning permission is required.
20. The appellant argues that the 'permanence of containers is also a matter of fact and degree and it does not follow that these should be treated as permanent'. It is asserted that the containers could be moved elsewhere on site and removed when they are no longer required so it is not definitive that planning permission is required given the absence of a change of use.
21. Putting to one side that I have found that a material change of use has occurred, given their function, a shipping container is clearly designed to be capable of being moved from one position to another. However, there is nothing to indicate that is the intention and the siting of large shipping containers on land, whether full or empty, are normally judged to be operational development and tantamount to a permanent building.
22. To assess whether they are, established case law¹ has set down three primary tests: size, permanency and the degree of physical attachment. No one factor will be decisive and any assessment will be a matter of fact and degree in the given circumstances.

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102

23. Whilst likely brought to the site as single containers, three have been amalgamated to create a single structure and internal space for the boxing gym and fitness studio. Such work was likely undertaken by a builder or similar tradesman with specific skills - having regard to the definition of building operations at s55(1A)(d) of the 1990 Act. Indeed, representation from an interested party refers to roofers carrying out the work. Moreover, the combined form of those containers results in a structure of significant size.
24. As the containers are fitted out with a boxing ring, punch bags, fitness equipment, lighting, electricity sockets and what appeared to be heating units, they are likely intended to have a substantial degree of permanence. Even if the combined structure is not fixed to the ground, it will clearly be held in position by its own substantial weight.
25. Therefore, as a matter of fact and degree, the amalgamated containers clearly amount to a building for the purposes of the 1990 Act, for which planning permission is required.
26. In any event, it was held in the case of *Somak Travel*² that an enforcement notice could require the removal of works which do not amount to development but had facilitated an unauthorised material change of use.
27. In this case, the combined shipping containers evidently facilitate the material change of use to boxing gym and fitness studio. So, even if I had not found the siting of those containers to be development in their own right, the notice is able to require their removal.
28. Nevertheless, the allegation should be corrected to clarify that the material change of use is facilitated by the siting of three amalgamated shipping containers. It logically follows that corresponding requirement (1)(a) should also be corrected to reflect that. I am able to make those corrections, which do not change the scope of the notice, without injustice to any party.
29. The second part of the breach (as corrected) relates to operational development and is concerned with the siting of three additional shipping containers, two of which are positioned alongside the containers used for the boxing gym and fitness studio, whilst the other is located a short distance to the north.
30. Although those individual containers are smaller, they are not of insignificant size. The appellant's response to the Planning Contravention Notice³ (PCN) explains that they are used to store items such as tractors, mowers and event equipment. It is therefore unlikely they are intended to be moved and a relatively high degree of permanency in their respective positions is likely. Moreover, even without stored items, the containers are likely held in position by their own substantial weight.
31. Again therefore, as a matter of fact and degree and on the balance of probabilities, the three additional containers amount to building operations, for which planning permission is required.
32. I therefore find that both matters alleged in the notice constitute a breach of planning control. The appeal on ground (c) fails.

² *Somak Travel v SSE & Brent LBC* [1987] JPL 630

³ Dated 12 September 2022

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

33. The main issues are:

- whether the development would amount to inappropriate development in the Green Belt having regard to the Framework and relevant development plan policies;
- the effect on the openness of the Green Belt;
- the effect on the character and appearance of the area; and
- if the development is inappropriate, 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 development.

Reasons

Whether inappropriate development in the Green Belt

34. The land to which the enforcement notice relates lies within the Metropolitan Green Belt. LP Policy SP8 seeks to protect the Green Belt from inappropriate development whilst paragraph 154 of the Framework explains that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt.
35. Exceptions to this include the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport and outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
36. Paragraph 155 of the Framework goes on to explain that, subject to the same caveats on openness and Green Belt purposes, certain other forms of development are also not inappropriate in the Green Belt. These include material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).
37. As the material change of use in this case relates to an indoor boxing gym and fitness studio, neither exception is applicable. For the same reasons, the development does not derive support from LP Policy SP8, which seeks to encourage beneficial use of the Green Belt through opportunities for outdoor sports and recreation.
38. The appellant argues that the use of the containers as a gym and as a boxing facility is strictly for members only and represents a secondary/ancillary use to the main football use for players and club members to train and rehabilitate.
39. Notwithstanding any contradiction with the appellant's response to the PCN that the facility is open to members of the public, and putting to one side any inference that argument may have to the ground (c) appeal, an incidental or ancillary use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user.

40. A fitness studio for the purposes stated could in principle be ancillary to the football use. I also note the appellant's response to the PCN that those containers are used as changing facilities for the ladies football team. That is clearly a use which is ancillary to the use of the adjacent land for a football pitch.
41. However, the majority of the internal space is given over to boxing, which is not normally found to have a functional relationship with a football use. In any event, I have found under ground (c) that the boxing gym and fitness studio use amounts to a material change of use of the land. It follows that the uses amount to primary (or main) uses in their own right, rather than an incidental or ancillary use. Moreover, the use is facilitated by a new building. Accordingly, containers which facilitate the boxing gym and fitness studio use do not meet the exceptions for outdoor sport in the Framework.
42. As noted, the appellant's PCN response explains that the three additional containers are used to store items such as tractors, mowers and event equipment. Their provision could therefore be argued as appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport or outdoor recreation. However, for reasons I will deal with shortly, those facilities do not preserve the openness of the Green Belt, and thus their provision does not meet the caveat to exception 154.b) in the Framework.
43. The appellant argues that the development utilises part of a brownfield site but being largely positioned on an area of grass adjacent to a football pitch, the land is likely excluded from the definition of previously developed land in the Framework. The development does not therefore fall to be considered against exception for the same in paragraph 154.g) of the Framework. Even if it did, for the reasons explained below, it would have a greater impact on the openness of the Green Belt than the pre-existing situation, and thus would fail the criteria of that exception.
44. Accordingly, I find that the development subject to the enforcement notice, amounts to inappropriate development in the Green Belt for the purposes of the Framework and LP Policy SP8.

Openness

45. Openness is identified in the Framework as one of the Green Belt's essential characteristics. It has a spatial aspect as well as a visual aspect.
46. The three shipping containers, which facilitate the boxing gym and fitness studio uses, combine to create a structure of significant size. Moreover, given that two of the three other shipping containers are positioned immediately adjacent to them, they effectively appear to combine to create an even larger single form.
47. The introduction of that overall mass and coverage to a grassed area between the surface car park and the goal line results in a clear erosion of the spatial aspect of openness in this part of the Green Belt. Also, being positioned alongside what appears to be the main changing room building, the containers materially extend the amount of enclosing, built development adjacent to an otherwise largely open football pitch. Given their combined size and that somewhat exposed location beyond the pre-existing sports and social club

buildings, the shipping containers have a clear, visual impact on the openness of the Green Belt.

48. The use of the containers for a boxing gym and fitness studio will also have inevitably increased activity in this part of the site, including car parking, which in turn contributes to the overall loss of openness, albeit at a minor level.
49. I therefore find that the three containers combined with the two other adjacent containers, result in a moderate adverse effect on the openness of the Green Belt.
50. The sole container is located adjacent to the long elevation of the changing room building and alongside a fairly rudimentary corrugated steel building. Taken in isolation its effect on spatial openness is limited but its siting visually consolidates that cluster of buildings, thereby adding to their overall presence. Being immediately adjacent to the club's surface car park, it has a clear visual effect on openness. Its overall effect is minor adverse.
51. I therefore conclude that the containers result in a loss of openness and conflict with the purposes of including land in the Green Belt, as set out in paragraph 143 of the Framework.

Character and appearance

52. The containers are, by their very nature, functional in their design and appearance and I do not agree that they are normally found in a sporting environment as suggested. Indeed no evidence is provided to show that they are.
53. In the context of the appeal site, they create a utilitarian and urbanising presence which distracts from a setting which opens out towards a playing field and the open countryside and woodland beyond.
54. Although in principle I accept that the containers could be externally clad to improve their appearance, I have no details of how that could be acceptably achieved in this case. I therefore attach limited weight to that argument.
55. Whilst the use of the three containers for a boxing gym and fitness studio contributes to health and wellbeing, the design of that provision, in the context of LP Policy SP5, does not.
56. I therefore conclude that the containers result in unacceptable harm to the character and appearance of the area, contrary to LP Policy SP5 and London Plan Policy D4. Those policies seek, amongst other things, to ensure that all development within the Borough is of high-quality design, contributes positively to the local environment, and protects the best elements of Bexley's character.

Other Matters

57. I note the retrospective planning application⁴ for the siting of a shipping container unit to house a multi-use gym facility with associated external floodlighting was refused on purported harm to the living conditions of surrounding residential occupiers through noise and disturbance. Whilst that harm is not cited in the reasons for issuing the enforcement notice, objections

⁴ Ref: 20/02892/FUL

have been received from occupants of properties in the local area and Frogna Place in particular.

58. Their concerns relate to noise and general disturbance emanating from the use as boxing club and fitness studio, including amplified music, loud conversations inside and outside of the containers and from the use of gym equipment. Concerns are also raised over cars using the car park and noise from revving engines, wheel spins, car radios, doors being slammed shut and general anti-social behaviour. Residents seek to highlight that those activities occur at all times of the day including early in the morning and into the evening time. It is further highlighted that a number of residents are key workers and work night shifts.
59. The appellant's position is that there is no harm to living conditions that cannot be suitably controlled by conditioning noise, hours of use and lighting.
60. I note the concerns expressed by the Council's Environmental Health team over the practical difficulties of using the containers for a gym from a sound insulation perspective, because in periods of warm weather the main access door would need to be kept open for ventilation purposes, thus affording minimal noise attenuation.
61. I do not disagree with those observations and the appellant has not shown that sound attenuation is a realistic proposition, such that an appropriate scheme could be achieved and capable of being secured by way of condition.
62. In mitigation, there is a significant separation to the nearest residential properties in Frogna Place, bolstered by an intervening band of trees and vegetation, which combined are likely to reduce the degree of harm. I am also mindful that the gym is relatively small so is unlikely to be able to accommodate significant numbers at any one time.
63. The surface car park is evidently a long-standing feature of the planning unit and will also be used in conjunction with use of the football field and social club. Whilst there will be additional noise and disturbance associated with the use of the car park by users of the gym, the harm arising is unlikely to be unacceptable in itself, particularly given the separation to the nearest residential properties.
64. The appellant has not clarified the hours of operation which would be acceptable to him but the hours sought with the planning application⁵ are 1700 hours to 2000 hours Monday to Thursday, 1700 hours to 1900 hours on a Friday, plus 0630 hours to 1230 hours on a Wednesday and 0900 to 1000 hours on a Saturday. On Sunday the gym was proposed to be closed but used as a changing room for the football teams.
65. Although that would still likely result in more frequent noise generation than that associated with the football pitch, those are not unreasonable hours of operation and conditioning as such would serve to restrict the duration of any unmitigated noise impacts. A condition precluding the use of amplified music would further reduce the likely effects.
66. Therefore, subject to those conditions, and having regard to the separation to the nearest residential properties, it is likely that unacceptable harm through

⁵ As set out in the Council's officer report

- noise and disturbance would be avoided during the colder months when the doors to the gym would remain closed.
67. However, dark coloured shipping containers are inevitably going to get hot inside, so it is very likely that during the warmer months the doors will be left open for ventilation purposes. Sound is therefore likely to travel to the nearest residential properties. When combined with the associated general comings and goings outside of the containers, material harm to the living conditions of local residents is likely. That harm is exacerbated by the relatively low level of background noise which is likely to be prevalent in the area.
68. I note concerns expressed by local residents regarding noise and general disturbance arising from patrons leaving the social club, the club's purported lack of adherence to opening hours, constant emptying of bottles and glass, and from its indoor and outdoor live music events and amplified music generally. I also sympathise that local residents' mental health and wellbeing may have been adversely affected by the same and that they may be vulnerable due to other health issues. I understand that the Council's Environmental Health Team are investigating a number of those concerns but matters relating to the pre-existing aspects of the sports and social club are beyond the scope of this appeal. Moreover, I have no evidence which suggests that incidences of anti-social behaviour can be attributed to the use for a boxing gym and fitness studio.
69. Contrary to that suggested, I have no information which indicates that the Council has permitted the club to place the containers on site without planning permission. Rather, the Council describes how it investigated complaints and properly issued a PCN under s171C of the 1990, prior to issuing the enforcement notice. I understand neighbours' concerns that planning permission was not sought before siting the containers, but I fail to see how the Council can be criticised in that context.
70. Whether or not the appellant requires a business licence to operate the gym is not a matter for this appeal. The question of why the Sports and Social Club allowed the matters stated in the enforcement notice to happen on their land, is a question for them, rather than this appeal. I have no evidence to suggest that doing so sets a precedent for other clubs and gyms in the area to do the same thing.
71. I note the objections made relating to the effects of external floodlighting but such fixtures do not form part of the breach of planning control or related requirements, so are beyond the scope of this appeal. So too is the use of a dirt road for off-road motorcycles. An interested party queries why the appellant is still able to operate, but until the appeal is decided, the appellant is entitled to assume success on any ground.
72. Reference is made by an interested party to an enforcement notice purportedly issued in October 2022, however, I haven't been provided with a copy of the same and, in any case, this appeal is made in relation to the enforcement notice issued in March 2023.
73. I note the concerns raised that the work to the containers was allegedly carried out during a COVID-19 related lockdown, and that the gym was being used against the related rules in place at that time. However, those are not matters for this appeal. Similarly, whilst I sympathise that key workers living in Frogna

Place were being disturbed at times of acute stress during the pandemic, such matters are no longer directly relevant.

Other Considerations and Green Belt Balance

74. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations⁶.
75. I have found that the uses facilitated by the siting of three amalgamated containers, and the siting of three additional containers, amount to inappropriate development within the Green Belt, and result in minor to moderate loss of openness. The Framework requires that I apply substantial weight to those Green Belt harms⁷.
76. I have also found harm to the character and appearance of the area. Moreover, in the absence of evidence, such as a noise assessment, which demonstrates that sound attenuation is a realistic proposition, it is likely that the use of the containers as a gym will be harmful to the living conditions of local residents during the warmer parts of the year. Those harms attract significant to moderate weight respectively.
77. The boxing gym and fitness studio can reasonably be considered as a community asset, which provides users with an opportunity to exercise and improve wellbeing. However, it is not shown that it would not be possible to accommodate those facilities elsewhere within the range of existing buildings at the sports and social club. On that basis, I attach moderate weight to those identified benefits.
78. Although the boxing gym and fitness studio can be said to contribute to healthy lifetime communities, those uses are facilitated by three shipping containers, so are not delivered in a high quality manner, in accordance with LP Policy SP1c.
79. For the reasons explained the land on which the containers are sited does not amount to brownfield land for the purposes of the Framework. The appellant has not shown that for the purposes of LP Policy SP1, brownfield land should be interpreted differently or is subject to a differing definition. Accordingly, the containers do not accord with criteria b of LP Policy SP1, which seeks to protect and enhance the natural and built environment by focussing new development on urban, brownfield sites.
80. The appellant states that the sports and social club has been adversely impacted by the COVID-19 pandemic and the cost-of-living crisis, and that it must diversify in order to ensure the business remains viable. It is further stated that the provision of the facilities will help maintain the footballing use that in turn maintains Green Belt openness.
81. However, the appellant's response to the PCN confirms that the multi-gym/boxing use of the shipping containers is by a separate company. Whilst the club may receive a rental income, I have no evidence to that effect. Nor do

⁶ Paragraphs 152 and 153

⁷ Paragraph 153

I have any other financial evidence which demonstrates that the boxing gym and fitness studio is required to ensure viability. Moreover, even if the footballing use is at risk, I cannot assume that a consequence of it being unviable is that the football pitch will be built on, particularly given its Green Belt status. I therefore attach only limited weight to those arguments.

82. The appellant argues that the containers are of a temporary nature and could be removed when they are no longer needed, and so a temporary or personal consent could remedy concerns.
83. Putting to one side any difficulty of moving the amalgamated containers, the Planning Practice Guidance (PPG) advises⁸ on the circumstances where it may be appropriate to impose a temporary condition. Those include where a trial run is needed to assess the effect of the development on an area; where it is expected that the planning circumstances will have changed in a particular way by the end of the temporary period; and to enable the temporary use of vacant land or buildings prior to longer-term proposals coming forward.
84. None of those circumstances are applicable in this case and the appellant provides no indication of when the containers may no longer be required. Nor is a timescale suggested for a grant of temporary planning permission.
85. Moreover, planning permission usually runs with the land and the PPG advises⁹ that it is rarely appropriate to provide otherwise. Although it states that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission, no such circumstances are advanced in respect of the appellant.
86. Therefore, neither a temporary nor personal planning permission are justified in this case.
87. I therefore find that the very special circumstances necessary to justify allowing the deemed planning application do not exist and I conclude that the use and siting of the containers represents inappropriate development that is, by definition, harmful to the Green Belt and in conflict with LP Policy SP8 and the Framework.

Conclusion

88. For the reasons given above, I conclude that the ground (a) development is contrary to the development plan as a whole, and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (f)

89. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.

⁸ Paragraph: 014 Reference ID: 21a-014-20140306

⁹ Paragraph: 015 Reference ID: 21a-015-20140306

90. The appellant argues that a material change of use of the land has not occurred and on that basis requirements (1)(a) and (1)(b) should be deleted. Those require, in short, the mixed use to discontinue by ceasing the operation of the boxing gym and fitness studio and for the three (facilitating) shipping containers to be removed. However, I have found under ground (c) that a material change of use has occurred. Moreover, I find that those requirements tally with the breach as corrected, and are necessary to remedy the same.
91. The appellant further argues that the use of shipping containers was chosen on the basis of an understanding that containers were temporary and could be removed without any resultant impact when the use ceases and is no longer required. On that basis it is stated that requirements (1)(b) and (2)(a) and (2)(b) of the notice should be deleted in their entirety and the enforcement notice quashed. Those latter requirements require the removal of the three additional containers and to return the land to its pre-existing condition.
92. However, no indication is given as to when the containers will no longer be required and for the reasons explained a temporary grant of planning permission has not been justified. More significantly for the purposes of ground (f), the appellant does not explain why those requirements are excessive for the purpose of remedying the breach of planning control in this case. The appellant has also not shown that there are any lesser steps that would remedy the breach of planning control.
93. I find that the requirements of the notice are not excessive and that the appeal on ground (f) should fail.

The Appeal on Ground (g)

94. The ground (g) appeal is that one month given to cease the use of the gym and the four months given to remove all six shipping containers and return the land to its pre-existing condition, are too short.
95. It is argued that the gym has been operating since the COVID-19 lockdown measures were eased and that it acts as an important community asset, and that one month's notice does not provide sufficient time for users of the facility to find alternative training opportunities, which in turn could have a major impact on health and wellbeing.
96. I agree insofar as one month is a fairly abrupt end to the provision of the gym as a community facility. A boxing gym is also quite a niche provision so alternatives are likely to be more restricted than a conventional gym. A period of three months would strike a reasonable and proportionate balance between allowing users to find alternative facilities, and the public interest in this case.
97. Six to nine months is requested to allow for the containers to be removed and for the land to be restored to its original condition. However, the four months given is ample time for the appellant to find alternative storage for the training equipment, to remove internal works and to find alternative storage for the containers in the event that they have not been sold, and also to carry out the restorative works.
98. For the containers used for storage, the four months should run from when the notice takes effect. For the containers used for the gym, that should run from when that use is required to cease. The effect of those variations is that the

overall period to return the land back to its pre-existing condition is increased from four to seven months.

99. The appeal on ground (g) succeeds to that extent.

Richard S Jones

INSPECTOR

Annex 1

