

Appeal Decision

Hearing held on 5 March 2024

Site visit made on 5 March 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2024

Appeal Ref: APP/G2245/C/22/3306679

Land North of Old Place Farm, Beechenlea Lane, Swanley, Kent BR8 7PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Stephen Brogden against an enforcement notice issued by Sevenoaks District Council.
 - The notice was issued on 12 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land to storage and the erection of buildings, the siting of containers and laying of associated hardstanding.
 - The requirements of the notice are:
 - 1) cease use of the land for storage purposes
 - 2) demolish buildings and remove resultant material from the land
 - 3) remove containers from the land
 - 4) remove hardstanding and resultant material from the land
 - 5) return the land to pre-existing condition
 - The period for compliance with the steps set out in paragraph 5 are: 6 months from the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (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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Formal Decision

1. The enforcement notice is corrected and varied by:
 - deleting the words 'change of use of the land to storage...and laying of associated hardstanding' from paragraph 3.
 - deleting the words from paragraph 5 1), 4) and 5).
 - deleting the words from paragraph 6 and replacing them with '8 months from the date on which this notice takes effect'.
 - by the substitution of the plan annexed to this decision for the plan with the red edge attached to the enforcement notice.
2. Subject to these corrections and variation, 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.

The Enforcement Notice

3. I have a duty to ensure that the enforcement notice is in order. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms provided I am satisfied that the correction or variation will not cause any injustice.

4. Prior to the Hearing both parties confirmed that the plan attached to the notice should be substituted with a new plan containing an amended red edge. This is due to the grant of two planning permissions and a lawful development certificate after the notice was issued. These relate to land which forms part of the site edged red on the plan attached to the notice. Without correcting the plan, the steps in the notice would go too far. Hence, I concur with both parties that the plan should be corrected, and that this would not cause any injustice. This is attached to this decision.

Preliminary Matters

5. Plan Ref: 01 Revision A shows the layout and extent of the buildings and containers on the land. However, events on the ground have changed. Container 01 has been removed from the land along with the metal shed and canopy. As part of their case on ground (a) the appellant now proposes through plan Ref: 02 Revision A to reorientate outbuilding 03 90 degrees, to keep outbuilding 01 and to remove containers 03 and 04. Plan Ref: 03 is also to be considered as part of this ground in terms of the buildings and container proposed to be retained on the land. I have dealt with ground (a) on this basis.
6. The extent of the land registry title (Document N) reflects the landowner's ownership and the appellant's unit of occupation. However, the land edged red on the corrected plan attached to this decision covers only part of that land registry title. In this decision the land within the correct plan will be referred to as land to the east. The other land within the land registry title, but outside of the land subject of the corrected plan will be referred to as land to the west.

Grounds (c) and (d)

7. An appeal under ground (c) is that those matters do not constitute a breach of planning control. For an appeal to succeed under ground (d), the appellant must satisfy me on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.
8. Due to the overlap between the appellant's cases on grounds (c) and (d) I have considered them together.
9. Having regard to sections 171B(1) and 171B(3) of the Act, if the alleged material change of use had already occurred before 11 August 2012 and that use had been continuous since that time then the appeal should succeed under ground (d), providing that the use had not been superseded by a new chapter in the land's planning history. Furthermore, the material date insofar as the buildings, containers and hardstanding is 11 August 2018.
10. The appellant's case on ground (d) relates to the alleged material change of use of the land to storage. Their case on ground (c) is that, if some or all of the site (not limited to the land edged red on the plan attached to the notice) is found to be lawfully in use for storage, then the hardstanding would have been permitted development when it was constructed. The appellant's case on grounds (c) and (d) does not however include the buildings or containers erected in the eastern part of the site.
11. Before assessing grounds (c) and (d), it is first necessary to consider what the correct planning unit is, and the present and past primary uses of that unit.

The Planning Unit

12. What constitutes the planning unit is a matter of fact and degree. In the case of *Burdle v Secretary of State for the Environment and another* [1972] 1WLR

1207; [1972] 3 All ER 240 it was held that the starting point is the 'unit of occupation. That will normally be the planning unit 'unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.

13. Despite initial disagreement, the main parties agree that the planning unit is the land edged red on the land registry title. The Council, however, suggest that the land in the eastern part of the planning unit is subdivided into many different parts by fencing, and it contains new hard surfacing and structures. On this basis, the Council contend that it has a different character to the land in the western part of the site that benefits from a lawful storage use. In short, the Council assert, notwithstanding the lawful storage use in the western part of the planning unit that the land in the eastern part of the site, which is subject of the notice based on the corrected plan, is in a nil use, and a new chapter in the site's planning history has been created.
14. The planning unit was once in residential use as part of The Old Place Farm. An access went through the planning unit connecting the dwelling to Beechenlea Lane. Upon the sale of the dwelling in 1985, the land in the planning unit was separated from the remaining land associated with the dwelling, forming a new planning unit. The former owners of the dwelling retained ownership of the planning unit and their son has owned the land since 22 October 2019. In 1985, the access to the dwelling was made into a single in/out route from the lane and separate from the planning unit.
15. The landowner confirmed that the planning unit has never been physically subdivided, and multiple vehicles, equipment and building materials have been stored on the whole planning unit and in the buildings in the western part of the site since at least July 2012 and June 2022. Aerial photographs show the lack of any physical division between the two areas of land. A photograph attached to Mr Littley's Statutory Declaration appears to be of a certain age based on the quality of the image and supports the use of the site for the storage of a vehicle and equipment.
16. Conversely, the business inventory, whilst dated 3 October 1990 does not directly draw a link between the storage of those items and the planning unit, though I accept the Statutory Declaration of Mr Littley does confirm that those items were stored in the buildings on the western part of the site. Due to the quality and scale of the aerial photographs they are not definitive about the extent of storage taking place on the planning unit. That said, parts of the planning unit would have needed to have been used as part of the lawful storage use on the western part of the site for that use to have been carried out. This is due to the position and orientation of the buildings in relation to the access. The aerial images from 2001-2003, 2007, 2008-2009, 2012 and 2015-2016 support the appellant's point in this regard. The image from 2001-2003 goes further in that it shows items stored across the planning unit; a matter which the landowner confirmed at the Hearing had taken place on the site.
17. Two supporting letters support the landowner's explanation of how the planning unit has been used. They are not Statutory Declarations, so carry less weight, but they add to the body of evidence concerning the use of the planning unit for storage since at least July 2012.
18. The appellant has occupied the site since 15 March 2020, and they have used the whole planning unit for storage on the understanding the land forms a single curtilage in connection with an ongoing storage use. Photographs from 2020 and 2022 support the claimed storage use across the whole planning unit,

thereby demonstrating a continued physical and functional connection.

19. The land to the east has not and is not physically separate from the land in the western part of the planning unit, and the full extent of the land is the unit of occupation. That situation did not change when the appellant became a tenant. The access extends from the lane into both parts of the planning unit. Fencing does subdivide plots within the eastern portion of the site, but they are laid out in a 'U' shape around the access. Two of the plots are rented out but despite their tenancy they are physically and functionally part of the same storage use.
20. Applying *Burdle*, the planning unit relates to the land edged red on the land registry title as it is a single unit of occupation. The hardstanding, buildings and containers in the eastern part of the site have changed the appearance of the land, but despite changes in the goods stored, the character of the activity and implications for the area in how the site is accessed and used remain the same. There is also no evidence to suggest that there has been a period of non-use of the planning unit, that another use has taken place, or the owner has intended to suspend the storage use or cease it permanently. Therefore, on the balance of probabilities, the primary use of the planning unit is for storage, and I do not consider that storage use has been lost or that the land in the eastern part of the planning unit is in nil use as that use has taken place on a continuous basis for a period more than the ten-year period required.
21. Hence, there has not been a material change in the use of that land. As such, the appeal on ground (d) insofar as the use of the land succeeds, and I will correct the notice to this effect. The corrected plan does not reflect the extent of the planning unit, but the notice does not have to be directed at the whole unit or identify it.
22. The Council accept that if I were to agree with the appellant's case about the extent of the planning unit and the storage use, that the hardstanding would be permitted development having regard to Schedule 2, Part 7, Class J of The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO) .
23. The hardstanding on site comprises a mixture of crushed stone, block paving and 22mm porous tarmac. As the GPDO does not grant retrospective planning permission the hardstanding would need to have been permitted by the GPDO in force when the development was begun. The hardstanding was subject of two planning applications prior to the notice being issued. I am not aware of any changes to the hardstanding since then. There is no substantive evidence to suggest that the crushed stone and porous tarmac were not porous. Furthermore, even if the modest area of concrete paving slabs is not porous, surface water is directed off that hard surface to a porous surface within the site due to ground levels. Consequently, the hardstanding was permitted development, and the appellant's case on ground (c) succeeds and I will correct the notice accordingly.
24. The appellant's case on grounds (c) and (d) does not include the buildings or containers erected in the eastern part of the site as they were erected within the four years prior to the notice being issued. As such, they are not immune from enforcement action and are a breach of planning control.

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

25. As a result of my findings on grounds (c) and (d), the main issues for the appeal on ground (a) are: (a) whether the buildings and containers would be inappropriate development in the Green Belt, having regard to the National

Planning Policy Framework (the Framework); (b) the effect of them on the openness and purposes of the Green Belt; (c) the effect of the buildings and containers on the character and appearance of the area, including whether they would preserve or enhance the setting of the Grade II listed Alice Dene and the Swanley Village Conservation Area; (d) the effect of the buildings and containers on ecology; and (e) if the buildings and container are 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.

Whether inappropriate development, openness and purposes

26. The appeal site is set back from the lane and positioned on the edge of the village, where the grain of development is looser and interspersed with fields. Nevertheless, I consider the site lies within the village given its proximity, and the adjoining land uses and buildings.
27. The Development in the Green Belt Supplementary Planning Document (SPD) outlines the Council's definition of what limited infill development in a village is for residential development. The SPD does not specifically outline the Council's approach to other forms of development, but the definition does offer a reasonable approach.
28. The scale of development is modest, but the buildings and container are set back from the lane and do not form a built-up frontage. The access from the lane does not change my view on this. The proposal would not accord with the SPD's definition. Hence, despite the site's location and the proposal's scale, it would not accord with exception e) of Framework paragraph 154.
29. The buildings and container have added built form to the land. They are closely laid out, and they are visible from the lane. Added to this, their number means that the land now has considerable development within it, despite the containment provided by trees to the south. The position of the site does lessen that harm, as does neighbouring development, but the proposal harms the openness of the Green Belt to a limited degree.
30. Noting this, even if I were to consider the whole or part of the planning unit to be previously developed land, the buildings and container have a greater spatial and visual impact on the openness of the Green Belt than what was there beforehand due to their scale, mass, position, and number. The addition of landscaping would not change the spatial effect, even if, over time, there would be some visual benefit from it. The proposal does not accord with Framework paragraph 154 g).
31. Despite the development, there has been no merging of neighbouring towns, nor has it resulted in sprawl of large built-up areas due to its scale or caused harm to the setting and special character of a historic town. However, encroachment has arisen due to the occupation of the appeal site by built form, that has increased the spread of buildings across the wider site and immediately next to open fields. This harm, while limited, conflicts with the third Green Belt purpose.
32. I conclude that the buildings and container are inappropriate development in the Green Belt, and that they harm the openness and the third Green Belt purpose. The proposal conflicts with Framework paragraph 154 e) and g).

Character and appearance

33. The appeal site lies within the Swanley Village Conservation Area. Its special

interest is historic and architectural due to its character as a Kentish rural hamlet with a mix of historic buildings that reflect the village's incremental growth and the use of traditional craftsmanship. The special interest also derives from the well-defined village boundary and sense of isolation, despite its proximity to Swanley town and the M25 motorway.

34. Spatially, development in the Conservation Area follows a linear format along a narrow, winding main street with secondary streets or lanes off them, such as Beechenlea Lane, which has a looser texture, mature trees and hedges. The appeal site typifies these characteristics. Buildings in the Conservation Area are typically small-scale and domestic in character and follow simple forms with traditional pitched roofs.
35. The siting, form, design, and materials used for Alice Dene share the Conservation Area's special interest. There is no intervisibility between Alice Dene and the buildings and containers due to their respective positions and the narrow, windy nature of the lane that is lined by mature hedgerows. There is also intervening development and an open field.
36. The buildings and container may be modest in scale, but they do not reflect the traditional character of buildings in the Conservation Area. They are utilitarian in their design and finish. The buildings and container have harmed the site's rural character and appearance, though I recognise that the existing buildings in the western part of the site afford some screening of this.
37. The appeal site may be a relatively small part of the whole Conservation Area, but this does diminish the harmful effect that has been caused to the special architectural and historic interest of the Conservation Area. By extension of this, buildings and container harm the setting of Alice Dene to a limited degree.
38. A planning condition could secure different materials for the external parts of the buildings and potentially the container, but they would still not reflect the traditional craftsmanship, form, or character. The proposal would therefore not preserve or enhance the setting of Alice Dene or the character and appearance of the Conservation Area. In the context of the Framework, I consider these harms to be at the lower end of the spectrum of less than substantial harm.
39. There would be economic benefit from supporting a rural business at the site and the re-use of previously developed land, however, the public benefits would not outweigh the less than substantial harm identified, which I give considerable importance and weight. I conclude, in respect of this issue, that the proposal harms the character and appearance of the area, and it does not preserve or enhance the setting of Alice Dene or the character and appearance of the Conservation Area. Conflict is caused with Policies EN1 and EN4 of the Allocations and Development Management Plan (ADMP), Policy SP1 of the Sevenoaks District Council Core Strategy (CS) and Framework paragraph 208. Together, these policies, among other things, seek, development of a high quality design that responds to the distinctive local character, its layout, and the use of materials in the area in which it is situated.

Ecology

40. An in-principle concern was raised by the Council concerning the loss of biodiversity from the site and the lack of an ecological assessment. However, given the site's proximity to fields and trees and as the development has taken place, it is common ground between both parties that a planning condition to secure new habitat would overcome the Council's concerns. On that basis, the

proposal would accord with CS Policy SP11 which seeks to conserve biodiversity and take opportunities to enhance it to ensure no net loss of biodiversity.

Other considerations

41. The scale of the buildings on the site may not be considerable, but their number and siting mean that they are not akin to domestic outbuildings. Additional landscaping would lessen their effect on the Green Belt, the Conservation Area and Alice Dene, but it would not alleviate the harmful effects entirely. As such, these matters carry neutral weight.
42. I have set out my findings with respect to the purposes of the Green Belt. The fact that conflict arises, even if limited, does not weigh in favour of the proposal. There would, however, be some limited benefit from the use of previously developed land, and I have found that the land's use is for storage. In this regard, the proposal would help support the business, which is in a rural area. The economic benefit would be limited given the scale of the site, even if it is in tune with Policy SP 8.
43. I have outlined why the proposal does not preserve or enhance heritage assets and the character and appearance of the area. Planning conditions in respect of external materials, lighting, landscaping, and permitted development controls would not change that. The development took place prior to the ecological assessment. I do, however, recognise that an ecological and enhancement strategy could potentially avoid any losses, and if it secured any gains, these would attract limited weight in favour of the proposal.
44. There is no substantive evidence to show that there is a need for extra storage in the area, though I recognise the appellant's anecdotal evidence that there is not any. There is also no guarantee that local people are or will be employed on the site. Both matters would attract limited positive weight at best.

Conclusion on ground (a)

45. Although the imposition of suitable planning conditions in respect of ecology would overcome the harm in respect of this matter, the proposed buildings and containers are inappropriate development in the Green Belt, and they harm the openness and a purpose of the Green Belt. The harm is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and carries substantial weight. Very special circumstances will not exist unless the harm to the Green Belt and any other harm, which in this case relates to heritage assets, is clearly outweighed by other considerations.
46. Collectively, the other considerations do not clearly outweigh the harm that I have identified. Therefore, the very special circumstances necessary to justify the development do not exist. As such, I conclude that the proposal does not accord with the development plan as a whole and there are no material considerations that indicate that I should take a decision other than in accordance with it. As such, ground (a) therefore fails and the deemed application for planning permission is dismissed.

Ground (f)

47. The notice seeks to remedy the breach and any injury to amenity. Despite the appellant's contrary view, the steps identified in the notice are not excessive following my findings on grounds (c) and (d). There are no lesser steps that would address the Council's concerns about the effect of the buildings and container. Therefore, they are not excessive to remedy the breach of planning control. Hence, I conclude that the appeal on ground (f) fails.

Ground (g)

48. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.
49. The time period for compliance with the enforcement notice is six months. The appellants seek twelve months to allow adequate time to find an alternative site and obtain planning permission for storage use. Sites suitable for storage use are said to be in short supply, and of those, it is generally not cost effective to divide those sites into open yards with lower scale structures as they do not yield returns as high as those sites with large scale buildings on them. The appellant says that suitable sites for storage come up very rarely and are not catered for by planning policies. Time, they say, will be needed to find another site and obtain planning permission.
50. The appellant has not looked for potential alternative premises since the notice was issued. There is also no analysis of the potential search area or of the frequency at which potentially suitable sites come up to support the assertions made about their availability. However, due to my earlier findings, the time period is now focused on the buildings and containers which would not take long to remove. There is no evidence to suggest the six month compliance period would not be a reasonable period to provide any tenants with the notice that may need to be given.
51. Nonetheless, consideration does need to be given to whether the site would have the facilities that the appellant seeks to carry out the storage use, given my findings on grounds (c) and (d). The existing building in the western part of the site can be used to store items but, it is unclear whether any other buildings may potentially be desired. If any are, planning permission is likely to be required. Discussions with the Council, preparation of an application, and consideration of the application would be needed.
52. However, if the appeal site is not suitable once the buildings and container are removed, then an alternative site may be deemed necessary by the appellant. They would need to search for sites, prepare and submit a planning application, and discharge any potential conditions. There is a need to remedy the breach, and twelve months is not a reasonable and proportionate time period to achieve either option. I consider eight months to be a proportionate response for the reasons set out, and to that extent, the appeal on ground (g) succeeds.

Overall Conclusions

53. For the reasons given above, I conclude that the appeal on grounds (c) and (d) should succeed. I also conclude that the appeal on grounds (a) and (f) should fail. However, I conclude that the period for compliance with the notice falls short of what is reasonable. The appeal on ground (g) succeeds to that extent. I have also made various corrections to the notice so that it is in order.
54. The overall outcome is that I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Brogden
Paul Nicholls
Philip Littley

Appellant
Graham Simkin Planning
Landowner

FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bidwell
Louise Cane
Elijah Williams

Planning Officer
Planning Enforcement Manager
Planning Enforcement Officer

DOCUMENT

1 – Proposed Block Plan Drawing No 02 Revision A

Plan

This is the plan referred to in my decision dated: 22nd April 2024

by Andrew McGlone BSc MCD MRTPI

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Land North of Old Place Farm, Beechenlea Lane, Swanley, Kent BR8 7PR

Scale: DO NOT SCALE

