



Appeal Decisions

Site visit made on 23 January 2024

by Thomas Shields DipURP, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

Appeal A: APP/T2215/C/23/3328149

Land at St Marys Nursery, 103 Birchwood Road, Wilmington, Kent, DA2 7HQ (Notice A)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act").
 - The appeal is made by Mr Balbir Singh Heer (St Mary's Development (Kent) Ltd) against an enforcement notice issued by the Dartford Borough Council.
 - The notice was issued on 17 August 2023.
The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land for the storage and distribution of scaffolding, building materials and other associated materials.
 - The requirements of the notice are:
 1. Cease the use of the Land for storage and distribution of scaffolding, building materials and other associated materials;
 2. Cease the parking and storing of H.G.Vs and other vehicles associated with the unauthorised use;
 3. Dismantle and remove from the Land the staging for the storage of scaffold equipment;
 4. Remove from the Land all storage containers and portacabins;
 5. Remove from the Land all fencing erected;
 6. Remove from the Land all building materials, scaffolding and scaffold structures.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B: APP/T2215/C/23/3328150

Land at St Marys Nursery, 103 Birchwood Road, Wilmington, Kent, DA2 7HQ (Notice B)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act").
- The appeal is made by Mr Balbir Singh Heer (St Mary's Development (Kent) Ltd) against an enforcement notice issued by the Dartford Borough Council.
- The notice was issued on 25 July 2023.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land for the storage and distribution of scaffolding, building materials and other associated materials.
- The requirements of the notice are:
 1. Cease the use of the Land for storage and distribution of scaffolding, building materials and other associated materials;
 2. Cease the parking and storing of H.G.Vs and other vehicles associated with the unauthorised use;
 3. Dismantle and remove from the Land the staging for the storage of scaffold equipment;
 4. Remove from the Land all storage containers;

5. Remove from the Land all fencing erected;
 6. Remove from the Land all building materials, scaffolding and scaffold structures.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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DECISIONS

APPEAL A

1. It is directed that the notice compliance period is varied in Section 5 by deleting the words "six months" and substituting instead "eight months". Subject to the 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 Act.

APPEAL B

2. It is directed that the notice compliance period is varied in Section 5 by deleting the words "six months" and substituting instead "eight months". Subject to the 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 Act.

Application for Costs

3. An application for an award of costs was made by the appellant company against the Dartford Borough Council. This application is subject of a separate Decision.

Background

4. The two appeal sites (A and B) are each identified by the red lines on the respective enforcement notice plans. They sit close together and lay within a much larger area known as St Mary's Nursery, off Birchwood Road ("the Nursery site").
5. The Nursery site has a long planning history, originally forming one large site used for agricultural purposes, but over the years subdivided into different planning units for various commercial uses, some of which were granted planning permission, including on appeal, but others subject to enforcement action by the Council. However, with regard to the uses alleged in the current enforcement notices in Appeals A and B there are no appeals made on ground (b) that they have not occurred, or on ground (c) that they do not constitute a breach of planning control, or on ground (d) that they are immune from enforcement action.
6. Given that the two appeal sites are close together within the overall Nursery site, and that the ground(a)/deemed application for planning permission is the same for both, and also with the same main issues for consideration I will deal with both appeals together as far as possible.

APPEALS A and B:

Ground (a)/deemed applications for planning permission

Main Issues

7. The main issues in the appeals are:

- (i) whether the development is inappropriate development in the Green Belt;
- (ii) the effect on the character and appearance of the area; and
- (iii) if inappropriate; whether any harm to the Green Belt 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

Planning policies

8. National planning policy with regard to Green Belts is set out in the Framework¹ and is broadly reflected in Policy DP22 of the Dartford Development Policies Plan (2017) (LP), and in Policy M13 of the emerging Dartford Local Plan. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. LP Policy DP22 states that inappropriate development in the Green Belt will be resisted in accordance with national planning policy.
9. LP Policy DP2 seeks to ensure that all development is of a good design that responds to, reinforces and enhances positive aspects of the locality.

Issue (i) - Whether inappropriate development in the Green Belt

10. It is argued for the appellant that the alleged use in both appeals falls to be considered as one of the listed exceptions to being inappropriate development at paragraph 155(e) of the Framework.
11. In support of this argument reference is made to previous land uses and to periods of time that they subsisted: "*open storage and the display and sale of garden sheds*" in Appeal A, and "*storage and siting of containers*" in Appeal B. However, there is no convincing evidence before me of those uses having become lawful through the passage of time, or otherwise, or that the current areas of land subject of the enforcement notices are the same planning units as those occupied previously. In any event, putting those matters aside, the past uses described by the appellant are materially different ones to those alleged in the enforcement notices subject of these appeals for which planning permission is now sought. Moreover, as I set out earlier, there are no appeals made on grounds (b), (c) or (d).
12. The exception at Framework paragraph 155(e) relates to *material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)*. This is not a closed list, but neither is it as open as the appellant suggests. The specific uses described in brackets exemplify the type, nature and likely effects on openness of other activities

¹ National Planning Policy Framework (2023)

that might qualify even if not specifically listed. In this regard the industrial storage and distribution of scaffolding, building materials and other associated materials subject of the notices, together with siting of industrial containers and associated on-site activities, and vehicle movements to and from the sites, is substantially different in type, nature and effects to those listed in 155(e). As such, I find the use subject of the appeals does not fall to be considered as an exception. That notwithstanding, there is a significant amount of elevated storage across the two sites which reduces openness significantly in a spatial sense and to a lesser extent in a visual sense. As such, the uses fail to preserve the openness of the Green Belt as required by Framework paragraph 155.

13. Consequently, since the use subject of the notices does not fall within any exception within the Framework, it constitutes inappropriate development in the Green Belt. As set out in Framework paragraphs 152 and 153 inappropriate development is, by definition, harmful to the Green Belt to which I attach substantial weight, and should not be approved except in "very special circumstances".

Issue (ii) - effect on character and appearance of the area

14. To the north-west of the appeal sites on rising ground levels there are some existing commercial buildings and uses, once part of the overall Nursery site, and beyond those residential gardens and houses adjoining the main road. To the south, east and to the west of the appeal sites the land is characterised much more by the open countryside landscape.
15. The site area in Appeal A is more screened from surrounding views than is the case in Appeal B. Nonetheless, the use of the sites for commercial storage and related activity as described further urbanises and reduces the open character of the area to the south that would otherwise exist. While the imposition of planning conditions to secure enhanced boundary treatments might mitigate to some extent the visual effects of the urbanising development, it would not overcome the significant change in the character of the area I have described.
16. I have considered whether other planning conditions, including those suggested, would make the development acceptable. However, I find that there are none that would do so. As such, I find that the development of the appeal sites results in harm to the character and appearance of the area in conflict with LP Policy DP2.

Issue (iii) – other considerations

17. Information has been provided² that the two businesses operating from sites A and B have encountered difficulty in finding suitable operating sites, including due to lack of availability and costs, and that this will continue to be a problem. The implications of such a scenario are that it could lead to loss of business and employment. I attach significant weight to this consideration.

Planning Balance and Conclusion on ground (a)/deemed applications

18. As set out earlier, inappropriate development in the Green Belt is harmful by definition to which I attach substantial weight. Further harm resulting from the effect on the character and appearance of the area attracts additional weight.

² See ground (g) Appellant Statement of Case

Against the totality of this harm the other considerations referred to by the appellant do not clearly outweigh this harm as required by Framework paragraph 153. I have also considered whether a temporary planning permission could be granted. However, while the harm would be reduced it would still not be clearly outweighed and which would continue for an unacceptably long period of time.

19. Paragraph 153 makes clear 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 considerations. I find that to be the case here.
20. For these reasons I conclude that the development subject of Appeals A and B conflict with the provisions of the Framework, the requirements of LP Policies DP2 and DP22, and with the Council's Development Plan as a whole. Accordingly, the appeals on ground (a) must fail.

Appeals on ground (g)

21. The ground of appeal is that the period of time for compliance with the requirements of the enforcement notices falls short of what should reasonably be allowed. The notice requires compliance within 6 months. The appellant seeks a period of 12 months for both appeals A and B.
22. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible. However, I acknowledge that finding an alternative site, making contractual arrangements and then physically relocating might take longer than 6 months. Against that, a period of 12 months is an unduly long period of time and which would in effect be comparable to a temporary planning permission, which I have rejected for reasons set out earlier.
23. In light of all the circumstances I consider on balance that 8 months would be more reasonable.
24. The appeal on ground (g) therefore succeeds to this limited extent and I have directed that the notices be varied accordingly.

Thomas Shields

INSPECTOR