



Appeal Decision

Site visit made on 30 April 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2024

Appeal Ref: APP/G2245/C/22/3300721

Land behind Barns east of Winkhurst Green Road, Ide Hill, Kent TN14 6LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Roger Ivo Lingham against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice was issued on 12 May 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the siting of containers.
 - The requirements of the notice are to:
 - 1) Remove all the containers from the land edged in red on the attached plan
 - 2) Remove any further resultant material from the land
 - 3) Use the land for agricultural purposes only.
 - The period for compliance with the requirements is 3 months from the date on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. It is directed that the enforcement notice be corrected with requirement 3) deleted, and also that it be varied with the specified time for compliance extended from three months to six months.
2. Subject to this correction 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.

Preliminary Matter

3. The site falls within the Metropolitan Green Belt and also the Kent Downs and High Weald National Landscape (KDHWNL), previously known as the Kent Downs and High Weald Areas of Outstanding Natural Beauty (AONB), with all AONBs having been renamed as National Landscapes in November 2023.

Background

4. The site forms a small part of an extensive agricultural unit, with the containers being sited to the rear of a series of barn buildings close to Winkhurst Green Road. In his representations the appellant indicates that there are twenty containers on the land, the majority of which are rented by a number of local businesses and residents for storage purposes.

5. In September 2021 an application for the temporary retention of a number of containers on the land was refused planning permission by the Council due to the considered harmful effect on the AONB and its rural character, an adverse impact on the openness of the Green Belt, and harm to the amenities of local residential occupiers.
6. Despite the above decision storage containers remained on the land and the Council then saw it expedient to issue an enforcement notice requiring for their removal.

Matters concerning the enforcement notice

7. The enforcement notice's Requirement 3) stipulates that the land be used for agricultural purposes only. This effectively means that should the land edged red on the plan attached to the enforcement notice be put to any different use in the future for which planning permission is required then, irrespective of whether or not the Council was to see it expedient to take enforcement action, there remains an unnecessary restriction attached to this notice.
8. In essence, any future material change in the use of the land from that for agricultural purposes would require the benefit of planning permission and, as such, Requirement 3 performs no planning purpose and is thereby superfluous. Accordingly, I shall correct the notice and delete this requirement.
9. The appellant comments that the site's red line on the plan attached to the notice goes beyond the actual area where the containers are sited, and takes in land which is still used for agricultural purposes. This might be the case, but the notice is clear in its allegation that the breach involves the siting of containers, and its first requirement stipulates that all containers be removed from the land edged in red on the plan attached to the notice.
10. Accordingly, I am satisfied that the enforcement notice shows clarity in both its purpose and requirements such that it cannot be reasonably open to interpretation.

The appeal on ground (e)

11. S172(2) of the 1990 Act requires copies of an enforcement notice to be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
12. The enforcement notice shows that it was served on both Roger Ivo Lingham and Tom Lingham. I understand from the documents submitted that they are father and son. Nonetheless, the appellant says in his written statement that the enforcement notice was incorrectly served, as the freeholder of the land is only Roger Ivo Lingham. That might be the case but the Council, for its part, says that all communications throughout the enforcement investigation went through Tom Lingham and the appointed agent. There had been no contact with his father.
13. In the circumstances, it is obvious why the notice was also served on Tom Lingham. The appeal itself has been lodged in the name of Roger Ivo Lingham, and no one has been prejudiced.
14. Accordingly, the appeal on ground (e) does not succeed.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issues

15. The main issues in this appeal are:

- 1) whether the development constitutes inappropriate development in the Green Belt and, if so, the effect on the Green Belt's openness;
- 2) the effect of the development on the character of the land and the surrounding landscape, with particular regard to its National Landscapes location;
- 3) the effect on the living conditions of neighbouring residential occupiers; and
- 4) if it is 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, and the Green Belt's openness

16. Paragraph 152 of the National Planning Policy Framework (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraphs 154 and 155 goes on to set out certain forms of development, both uses of land and buildings that might not be considered inappropriate in the Green Belt. A proviso, however, is that the openness of the Green Belt should be preserved and should not conflict with the purposes of including land within it. Here, the containers facilitate a storage use unrelated to the agricultural unit itself and, as none of the exceptions apply, it is inappropriate development for the purposes of the Framework.
17. Paragraph 153 indicates that the decision maker should ensure that substantial weight is given to any harm to the Green Belt. Also, the very special circumstances that must be demonstrated will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting, is clearly outweighed by other considerations.
18. The next point to examine is whether the development at appeal is harmful to the openness of the Green Belt. The Framework states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open.
19. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis. The stationing of such a large number of containers situated immediately side by side on open land has resulted in a significant change of character, and this has been accentuated by the hard-surfacing having been extended to accommodate the containers.
20. To illustrate, in the judgement of *John Turner v Secretary of State for Communities and Local Government*, heard in the Court of Appeal, it was said that the word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a

specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if development occurs and also factors relevant to the visual impact on the aspect of openness which the Green Belt presents. A 2020 judgement (*Samuel Smith Old Brewery and others v North Yorkshire CC*) concluded that matters relevant to openness in any particular case are a matter of planning assessment, so whilst visual impact can be relevant to openness it is not necessarily relevant in all cases.

21. In this particular instance I find the concentrated stationing of such a large number of storage containers as visually obtrusive, uncharacteristic of, and contrary to, the purposes of the Green Belt. They may be a bottle green colour but this does not mitigate the resultant adverse effects.
22. In both spatial and visual terms I therefore consider that the development has a significant impact on the openness of the Green Belt. As such, the proposal fails to safeguard the countryside from encroachment, one of the five purposes of the Green Belt, and does not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.
23. Accordingly, I find the development to be in material conflict with the Framework's objectives and harmful to the openness of the Green Belt.

Landscape and Character

24. The Countryside and Rights of Way Act 2000 states that Councils should conserve and enhance AONBs, as the reason for designation is due to their distinctive character and natural beauty. It is acknowledged, though, that human settlements and development may lie within, and the current appeal represents a case in point.
25. The appellant says that the containers shield the unattractive elevations of the barn buildings. That, though, is a subjective judgement but, even if they did, it certainly does not mean that the containers conserve the landscape nor perform an enhancing role. Instead, it must be a reasonable assessment that the containers detract from the National Landscape.
26. Accordingly, it follows that the landscape has been unduly harmed, as has the character and appearance of the KDHWNL, by the containers' siting and the storage use's continuation. This also conflict with the aims and requirements of policy EN5 of the Council's Allocations and Development Management Plan (DMP).

Living conditions

27. There are two residential properties in proximity to the barn; Old Forge Cottage to the north, and to the south, The Smokery, which is the closest. The propensity exists for both properties to be unduly affected by the stationing of the containers the use of which, apart from the visual aspect, necessitates that materials and items are brought to and from the site.
28. Although the Framework does encourage the diversification of agricultural and rural based businesses it also, in paragraph 135(f), looks to protect local amenity for existing and future occupiers.

29. I consider that the concentrated siting of so many containers is an unneighbourly use of the land, and conflicts with the aims and requirements of DMP policy EN2.

Other Considerations

30. The appellant says the containers are vital for the farm's finances, making a significant contribution to its income. He goes on to say that it also helps diversification in accordance with the latest Agricultural Bill. In support, details have been provided of the rental income the containers provide. However, this figure, in isolation, does not explain why such an income is necessary to the farm as a viable unit. In the absence of fuller details which might give a more comprehensive picture, I consider that the stated income brought in from renting the containers is somewhat meaningless in itself.

Planning Balance

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
32. The current use is inappropriate development within the Green Belt which is also harmful to its openness. It is also harmful to the KDHWNL and likely adversely impacts on the living conditions of neighbouring occupiers. I acknowledge that the containers brings in some rental income for the farm but I have not seen any evidence to suggest that the agricultural unit is less than viable without these monies. It is also a difficult use to regulate or thereafter enforce and I am not convinced that a temporary permission, which would still reasonably require that a series of restrictive conditions be satisfied, would be appropriate in the circumstances.
33. The presence of the containers is therefore in material conflict with the relevant advice in paragraphs 152-155 of the Framework and DMP policies EN2 and EN5.
34. For the above reasons, and the fact that the very special circumstances necessary to outweigh the policy objection have not been demonstrated, having had regard to all matters raised, I conclude that the appeal fails and the planning application deemed to have been made under section 177(5) of the 1990 Act as amended is refused.

The appeal on ground (f)

35. An appeal on ground (f) is that the stipulated requirements for compliance go beyond what is necessary to remedy the harm caused by the alleged breach.
36. Having looked through the appeal papers, apart from an indication on the appeal form that an appeal on ground (f) was being lodged, I can find no reference to why this is considered the case and which lesser steps are being put forward to this end. In the absence of any alternative requirements and, as mentioned I am deleting Requirement 3), I am not able to make a further assessment in this regard.

37. Accordingly, save for the notice's correction, which I have discussed, the appeal on ground (f) fails.

The appeal on ground (g)

38. I have read the representations from local firms which are availing themselves use of the storage containers, and I appreciate that discontinuation of use might cause difficulties for these businesses. In the circumstances, and to help diffuse any problems with contractual arrangements that may be breached, I accept the appellant's argument that the compliance period should be reasonably extended to a period of six months.

39. The appeal succeeds to this extent.

Timothy C King

INSPECTOR