



Appeal Decision

Site visit made on 28 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024

Appeal Ref: APP/D2320/C/23/3322480

Land to the west side of Squirrel Lane, Anderton BL6 7RR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Tony Michael Dixon against an enforcement notice issued by Chorley Borough Council.
 - The notice was issued on 17 May 2023.
 - The breach of planning control as alleged in the notice is the unauthorised material change of use of land to land used for storage purposes including the erection of a fence to facilitate the material change of use.
 - The requirements of the notice are to:
 - i) Cease the use of the Land for storage purposes.
 - ii) Remove from the Land all building materials stored upon it.
 - iii) Remove the fence, posts and all materials relating to it from the Land, (shown in the approximate position marked yellow on the attached red line plan).
 - The period for compliance with the requirements is: 1 (one) month.
 - 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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Decision

1. It is directed that the enforcement notice is varied at section 6 by:
 - The deletion of '1 (one) month' and its substitution with '3 (three) months' as the time for compliance.
2. Subject to the variation above, 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.

Ground (c)

3. An appeal under ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. The fence, as shown by a yellow line on the plan attached to the enforcement notice, is suggested to benefit from permitted development rights under Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)(the GPDO), which, subject to certain limitations, permits the erection of a fence up to 2m in height.
4. It is not disputed that the fence does not exceed 2 metres in height. However, as set out in *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 and *Somak Travel v SSE & Brent LBC* [1987] JPL 630, an enforcement notice concerned with a material change of use, by virtue of section 173(4)(a) of the Act, may require the removal of works which would

otherwise be immune, including the removal of those which might not constitute development, or which might have been permitted development if they had not been constructed to facilitate the alleged use.

5. Although the fence was constructed substantially after the use of the land commenced, this of itself does not mean the enforcement notice cannot require its removal. The appellant suggests the fence was erected as a wholly separate operation to the use of the land. However, they confirm in their final comments that the fence was erected to limit any visual impact of the storage of materials. It was therefore not erected for some other lawful use but was erected to facilitate the alleged material change of use. As a consequence, the enforcement notice may require removal of the fence.
6. Thus, for the reasons given above, I find the appeal under ground (c) must fail.

Ground (d)

7. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
8. The appellant states the storage use has been continuous for more than 10 years and is therefore immune from enforcement action. The enforcement notice was issued on 17 April 2023 and so the appellant would need to show, on the balance of probabilities, that the material change of use occurred on or before 17 April 2013 and continued without significant interruption for at least 10 years thereafter.
9. As established in *Swale BC v First Secretary of State* [2005] EWCA Civ 1568, a lawful use must be 'affirmatively established'. A use can only become lawful if it continues throughout the ten¹ year period, to the extent that the Local Planning Authority could have taken enforcement action at any time².
10. The appellant states the site was previously used as residential garden by the occupiers of Taleford, the adjacent property. In late 2008, the appeal site was purchased by an individual, who it is stated, began using the site for general external storage of building materials. The appellant states they leased the appeal site in March 2016 and then purchased the site in March 2021.
11. I have been provided with an affidavit, signed by the individual who purchased the site in 2008 (whom I shall refer to as KB). The individual states they immediately began using the site for general external storage for general building materials, including stone and flags sourced from construction sites elsewhere in Chorley and Bolton but also sourced from demolition works to the adjacent restaurant building known as Sulton's Palace.
12. I have also been provided with an affidavit, signed by an individual who states they were employed as a general landscape gardener and

¹ The relevant immunity period

² *Thurrock BC v SSETR* [2002] EWCA Civ 226 and *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886

maintenance manager. The individual states the Land was used continuously between late 2008 and 2016 for the storage of general building material, including building stone and flags.

13. However, neither individual explains what they mean by the term 'continuously', nor is there any detail regarding the materials which are alleged to have been stored. It is not clear what materials were brought to site, in what quantity, how long they were stored at the site or whether there were periods of time when very little, if any materials/items were stored.
14. The Council has provided a Google Street View image, dated April 2009, which appears to show the land laid with grass and vegetation. There appears to be no physical delineation between the appeal site and the neighbouring residential property and no substantive storage activities taking place within the site. Although this is well before 17 April 2013, this undermines the suggestion made by both KB and the general landscape gardener and maintenance manager, that the use commenced in 2008.
15. While it may be possible the date shown on the Google Street View image is incorrect, there is limited evidence to show how the site was actually used following KB's purchase of it in 2008. A use which is of a casual or intermittent and insignificant nature may not have resulted in a material change of use of the land. From the evidence provided by the appellant, it is not clear at what point the material change of use occurred or whether there was cessation in the activity at any point, such that the immunity clock would have restarted.
16. The Council has provided an aerial image, dated April 2015, which appears to show the land laid with vegetation. An aerial image, dated June 2016, also appears to show the land laid with vegetation, with some limited disturbance of the ground adjacent to the highway. Within an aerial image dated March 2017, the ground across the site appears to have been disturbed, with what appear to be vehicle tracks, visible within the site. It is not clear from the image whether items are stored within the site.
17. An aerial image dated June 2018, appears to show items or materials stored to the rear of the site. It is possible materials are also stored near to the highway, though the quality of the image is limited. In an aerial image dated May 2019, the site appears largely vegetated, with what could be building materials stored near to the highway.
18. An aerial image dated September 2019 appears to show the site vegetated, with storage of materials not evident. An image dated April 2020, shows what could be building materials appear located close to the highway and some disturbance to the rear of the site. In the June 2023 aerial photograph, the fence is visible within the site and materials appear to be stored behind it, close to the boundary with Taleford.
19. I am mindful that aerial images provide a snapshot in time and are taken at distance and so vegetation may obscure items or materials located within a site. Nevertheless, the 2015 aerial image points towards the site not being used for storage at that time. Furthermore, later aerial photographs show limited activity within the site. It seems unlikely, from the evidence

provided, that the Council could have taken enforcement action at any point during a ten year period.

20. The Council advise they have been able to speak to the daughter of the occupants of Taleford, who confirmed that the Land was used as garden land until 2011. The Council has provided me with an email from the daughter, which includes a photograph of part of the appeal site and some text. The Council suggests this photograph shows the land completely cleared of all materials as of that date. However, the photograph was taken at an angle, and does not show the entire site. The text states 'We had it as a garden up until 2011', however, the text lacks clarity, is not witnessed, nor is it clear how often the author of the email visited the site and so I afford it very limited weight.

There is nothing in the evidence which leads me to believe that there has been concealment by positive deception, so as to deprive the appellant of the benefit of the 10 year limitation period in section 171B(3) of the Act. Nevertheless, for the reasons given above, I find the appellant's evidence is not sufficiently precise and unambiguous and has not shown, on the balance of probabilities, that the material change of use occurred on or before 17 April 2013 and continued without significant interruption for at least 10 years thereafter. Thus, the appeal under ground (d) must fail.

Ground (a)

21. The appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

22. The main issues of the ground (a) appeal are:
- Whether the appeal scheme is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (December 2023)(the Framework) and relevant development plan policies;
 - The effect of the appeal scheme on the openness of the Green Belt;
 - The effect of the appeal scheme on the character and appearance of the area;
 - The effect of the appeal scheme on the living conditions of the occupants of Taleford, having regard to outlook; and
 - 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 required to justify the appeal scheme.

Reasons

Whether Inappropriate development in the Green Belt

23. The National Planning Policy Framework (the 'Framework')(December 2023) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that

inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.

24. The construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 154. Paragraph 155 advises that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it, including b) engineering operations.
25. The appellant suggests engineering operations are capable of being appropriate development. However, the Council states it has no knowledge of any engineering operations taking place on the land and that the notice relates solely to the use of the land for storage purposes and for the erection of a fence to facilitate that use. While I saw the area of land closest to Squirrel Lane has been laid with what appear to be road planings, this is not evident in the photographs provided by the Council, including the aerial photograph dated June 2023, suggesting such works were carried out after the serving of the enforcement notice. As such, the enforcement notice could not have required its removal and paragraph 155(b) is not relevant to the appeal under ground (a).
26. The appellant also suggests that the material change of use is capable of being 'appropriate development' by virtue of paragraph 155(e), which concerns material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). However, one would normally expect a list which started with the words "such as" to be a list which took its flavour or extent from the examples given. If it was simply an open-ended category, then it is not clear why examples would be given at all. In my view, the uses permitted should be read as being very closely aligned to the examples given. This would not include a storage use and so the material change of use does not fall within the exception at paragraph 155(e) of the Framework.
27. The appellant suggests that the redevelopment of the site comprises infill development given the relationship of the site to other residential properties. However, exceptions 154(e) and 154(g) both concern the construction of new buildings, not a material change of use. While the appellant has erected a fence within the site, which would be considered a building for the purposes of the Act, the fence delineates different parts of the site and does not, in my view, constitute 'infill', nor does it constitute the redevelopment of previously developed land. As such, the fence does not fall within any of the exceptions listed under paragraph 154 of the Framework.
28. Thus, I find the appeal scheme is inappropriate development in the Green Belt.

Openness

29. The Framework sets out the purposes of Green Belt, including to check the unrestricted sprawl of large built-up areas. The appeal site is located outside the settlement of Horwich, along a generally rural lane with a limited number of properties along it. Despite its setback from the highway, the fence is clearly visible from Squirrel Lane. Given its solid construction and substantial height and length, it has resulted in a modest loss of openness. While

fencing limits views of the stored items from the public domain, materials and items stored within the site can be seen in the front section of the site, near the highway and when the gates are open.

30. Although the appeal site is bound by residential dwellings and appears to have previously comprised part of the residential garden of Taleford, the evidence shows that, it mainly comprised vegetation, with limited built development prior to the material change of use. The storage of building materials is an uncharacteristic form of development which harms the visual openness of the site.
31. Furthermore, the openness of the Green Belt has a spatial aspect as well as a visual aspect. This approach was endorsed in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council* (Appellant) [2020] UKSC 3, which also confirmed how to take account of the visual effects is a matter of planning judgement rather than one of legal principle.
32. While the items which are stored within the site do not extend above the adjacent fence lines, from a spatial perspective, their bulk and volume has resulted in a loss of openness. In my view, the appeal scheme has resulted in a modest adverse impact on the openness of the Green Belt, contrary to the expectations of the Framework.
33. While I have had regard to *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin), this concerned the limited infilling of a previously developed site. As set out above, I have found the appeal scheme is inappropriate development in the Green Belt and so the approach taken in that case is not directly relevant to the appeal before me.

Character and appearance

34. The enforcement notice comprises a rectangular shaped plot of land which is subdivided by fencing. While the majority of items are stored beyond the fencing (shown in the approximate position marked yellow on the plan attached to the enforcement notice) and so are not visible from the public domain, from the photographs provided and from my inspection of the site, it seems some items have been stored between this fencing and the highway.
35. Although fencing has also been erected adjacent to the highway, this is at a lower level and does not prevent views into the site from the public domain. Moreover, were planning permission to be granted for the material change of use of the land, the appellant would be able to store materials across the site. The storage of building materials within the site is at odds with the adjacent residential uses and the generally rural character of the lane.
36. Although it would be possible to limit the height of stored items by condition, items stored would still be visible when the gates are open or when stored between the fence (as marked in yellow on the enforcement notice plan) and the highway. Furthermore, it would be open to the appellant to remove the fence (as marked in yellow on the enforcement notice plan), resulting in the entire site being visible from the highway. It would not be reasonable to require its retention in perpetuity by condition.

37. In my view, the use of the site for storage is harmful to the character and appearance of the area, contrary to policy BNE1, criterion a) of the Chorley Local Plan 2012 – 2026 Site Allocations and Development Management Policies Development Plan Document (2015)(the DMP), which seeks to ensure that proposals do not have a significantly detrimental impact on the surrounding area by virtue of its siting, design and use of materials, amongst other things.

Living conditions

38. The appeal site is located between Taleford, a substantial semi-detached dwelling, which fronts onto Squirrel Lane and the rear gardens of Douglas House and Mulberry House, detached dwellings which front onto Bolton Road. Given the substantial distance between the dwellings of Douglas House and Mulberry House and the presence of intervening fencing, I consider the appeal site is unlikely to have any significant effect on outlook from those dwellings.
39. Windows in Taleford generally face towards Squirrel Lane or the rear and so views of the appeal site from habitable rooms would mostly be at an angle. As a consequence, although users of the rooms may be able to glimpse materials stored within the appeal site, the outlook from the windows is unlikely to be significantly harmed. There is a window in the elevation of Taleford which faces towards the appeal site. However, it is located on the top floor of the property and, given its position relative to the appeal site and the low level at which items are stored, I consider occupants of the dwelling are unlikely to find items stored within the appeal site overbearing.
40. As such, there would be no conflict with policy BNE1 criterion b) of the DMP in this regard, which seeks to ensure development would not cause harm to development would not cause harm to any neighbouring property by virtue of overbearing, amongst other things.

Other considerations

41. The storage of building materials enables can enable materials from building projects to be reused elsewhere, thereby reducing the need for raw materials and reducing waste to landfill. This is a benefit to which I afford modest weight. Although no details have been provided, the appeal site is likely to support some employment, which, given the limited information provided is a matter to which I afford limited weight.

Other Matters

42. In its final comments, the Council suggests that it is impossible to assess the highways impacts or any environmental impacts caused through noise or general disturbance.
43. With respect to highways, I saw that Squirrel Lane is a 'No Through Road' and serves a limited number of properties and so vehicle movements along the Lane are likely to be very limited. Vehicles are also likely to be travelling at a modest speed due to the limited width of the Lane. Vehicles exiting the site would be turning left. Although Squirrel Lane is of limited width close to the junction with the main road, it widens adjacent to the appeal site. In the event another vehicle is travelling along Squirrel Lane, a vehicle leaving the appeal site would be able to wait for it to pass before moving onto the

carriageway. To improve visibility for vehicles exiting the site, it would be possible to require the access to the site to be relocated further south, closer to Taleford. I consider there would be no conflict with policy BNE1 criterion d) of the DMP, which seeks to ensure development does not harm highway safety.

44. The nearest sensitive receptors to the site are the occupants of the adjacent dwelling, Taleford. With respect to environmental impacts caused through noise or general disturbance, the movement of vehicles and placing of items and materials within the appeal site has the potential to cause noise and disturbance. However, I see no reason why the storage of items and materials within the site would cause noise and disturbance which would be significantly harmful to the living conditions of neighbouring occupants.
45. Furthermore, it would be possible to limit the hours of operation by condition, to ensure noise and disturbance is not generated at times when neighbouring occupants are trying to sleep. As such, I consider there would be no conflict with policy BNE1 criterion g) of the DMP, which seeks to ensure development does not cause an unacceptable degree of noise disturbance to surrounding land uses.

Green Belt Balance and ground (a) Conclusion

46. The Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
47. The proposal is inappropriate development in the terms set out in the Framework and has led to a modest adverse impact on the openness of the Green Belt. I have found it also harms the character and appearance of the area. I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist, and the proposal conflicts with the Framework and with policy BNE1 of the DMP and the development plan taken as a whole.
48. Thus, for the reasons given above, I conclude that the appeal under ground (a) should be dismissed.

Ground (f)

49. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
50. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.

51. Given the requirements of the notice, it is clear that its purpose is to remedy the breach of planning control. The appellant suggests that planning conditions can be imposed if I have any reservations about unrestricted use of the land for storage purposes. However, I have considered such matters under ground (a) above and shall not repeat them here.
52. Schedule 2, Part 2, Class A of the GPDO permits the erection of a fence up to 2m where it is not adjacent to a highway used by vehicular traffic. However, permitted development rights cannot be applied retrospectively to development already carried out. Were I to uphold the notice, once the appellant had complied with its requirements, it would be possible for the appellant to erect another section of fence up to 2m in height above ground level.
53. However, I see no reason why the appellant would choose to erect another fence in this location in the event the use is required to cease. The fencing does not bound the site but subdivides the site. It limits views of materials stored beyond it from the public domain and also appears likely to be used as a means of securing items which are stored beyond it. In the event the storage use is required to cease, I see no need to subdivide the site in this way.
54. Leaving the fence *in situ* would fail to remedy the breach. In my view, the steps do not exceed what is necessary to remedy the breach. Thus, the appeal under ground (f) fails.

Ground (g)

55. An appeal under ground (g) is made on the basis that any period specified in the notice falls short of what should reasonably be allowed. The appellant requests that a period of 6 months is given for compliance, to allow them to hire a construction vehicle to move the building materials, fence, posts and materials relating to it, recycle any suitable materials and find an alternative site to store the building materials.
56. While I would agree it is desirable to find an alternative site to store the building materials, to ensure they can be reused where possible. Although the appellant may be in the building trade, the availability of alternative sites is likely to be out of their control. I consider 6 months to be excessive given the modest size of the site and the quantity of materials stored within it. In my view, 3 months would be a reasonable time period.
57. I shall vary the notice accordingly. The appeal under ground (g) succeeds to that extent.

Overall Conclusion

58. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended). The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR