



Appeal Decisions

Site visit made on 16 April 2024

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2024

Appeal A: APP/P1805/C/23/3324586

Land at Firs Farm, 244 Old Birmingham Road, Marlbrook B60 1NS

- 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 Mrs Vicky Brewster against an enforcement notice issued by Bromsgrove District Council.
- The enforcement notice was issued on 8 June 2023.
- The breach of planning control as alleged in the notice is;
 - 'a. Without planning permission, the carrying out of a material change of use of the Land from a mixed use comprising agricultural and residential use to a mixed use comprising residential, agricultural and use of land for open storage of scaffolding equipment, portacabins, shipping containers, Skips, Plant and Heavy machinery, Goods trailers, commercial vehicles, mixed waste (including but not limited inert material, plastics, paper, card, metal), chattels, and equipment within (but not limited) to the locations shown edged green on the Plan
 - b. Without planning permission, the importation and deposition of material (including but not limited to) soil and rubble; and consequential engineering operations to create a hard standing in association with the open storage use in the location shown shaded orange on the Plan.
 - c. Without planning permission, the creation of a raised plateau and erection of a building for purposes ancillary to the unauthorised use of the land in the location marked 'X' on the Plan.
 - d. Without planning permission, the erection of a pair of entrance gates and boundary wall exceeding 1 meter in height in the approximate location marked 'G' on the Plan.'
- The requirements of the notice are:
 - a. Permanently cease the importation and deposition of material on the land (including but not limited to) soil and rubble.
 - b. Permanently cease the utilisation of material described at 'a' above for the purposes of engineering operations on the land.
 - c. Permanently cease the use of the land for open storage of scaffolding equipment, portacabins, shipping containers, Skips, Plant and Heavy machinery, Goods trailers, commercial vehicles, mixed waste (including but not limited inert material, plastics, paper, card, metal), chattels, and equipment.
 - d. Permanently remove from the land all the scaffolding equipment, portacabins, shipping containers, Skips, Plant and Heavy machinery, Goods trailers, commercial vehicles, mixed waste (including but not limited inert material, plastics, paper, card, metal), chattels, and equipment which are associated with the unauthorised use.
 - e. Dismantle and remove off-site the portacabin building shown situated in the approximate position shown marked 'x' on the plan in Appendix 3 attached.
 - f. Permanently remove the imported material deposited on to the land shown shaded brown on the plan in Appendix 3 attached, and return that land profile to its original state.
 - g. Remove the entrance gates and boundary wall shown situated in the approximate position marked 'G' on the plan in Appendix 3 attached.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b) and (d) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/P1805/C/23/3331709

Land at Firs Farm, 244 Old Birmingham Road, Marlbrook B60 1NS

- 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 Mrs Vicky Brewster against an enforcement notice issued by Bromsgrove District Council.
 - The enforcement notice was issued on 21 September 2023.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the importation and deposition of material (including but not limited to) soil and rubble, and consequential engineering operations to create a hard standing in association with open storage use in the approximate location coloured black on the Plan, hereby referred to as 'the unauthorised development'.
 - The requirements of the notice are:
 - a. Permanently cease the importation and deposition of material on the Land (including but not limited to) soil and rubble.
 - b. Permanently cease the utilisation of material described at '5a' above for the purposes of engineering operations on the land.
 - c. Permanently cease the use of the land for open storage of plant and machinery.
 - d. Permanently remove from the Land all plant and machinery which is associated with the unauthorised use.
 - e. Permanently remove the imported material deposited on to the land and shown coloured black on the Plan, and restore that land profile to its condition before the breach took place.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by
 - The deletion of the plan attached, and the substitution of Plan A attached to this decision.
 - the deletion of the word 'Permanently' from paragraphs 5a, b, c, and d.
 - the deletion of the words 'in Appendix 3 attached' from paragraphs 5e and 5g.
 - the deletion of the 'x' from paragraph 5e and the substitution thereto of 'X'.
 - the deletion all the words in paragraph 5f and substitute thereto the words 'remove the imported material, deposited under and around building shown marked 'X' on the plan, used to create the plateau and restore this area to its condition before the plateau was created and the building erected.

Subject to these variations the appeal is dismissed and 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.

Appeal B

2. It is directed that the enforcement notice be corrected by
 - The deletion of the plan attached, and the substitution of Plan B attached to this decision.

and varied by

- the deletion of the word 'Permanently' from paragraphs 5a, b, c, d and e.
- the deletion of the word 'One' from paragraph 6 and its substitution with 'Three'.

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Appeal A and B The Notices

3. Appeals A and B both identify the land in red being the same area of land albeit each allegation seeks to attack a breach of planning control on different parts of the area outlined in red. It is clear from the evidence that Appeal A seeks to address alleged breaches of planning control at the entrance (entrance gates and boundary wall) from the Old Birmingham Road as well as the land to the south of the land outlined in blue up to the east/south east site boundary. It is clear from the evidence that Appeal B seeks to address alleged breaches of planning control close to the pair of semidetached dwellings sited towards the front of the land (outlined in blue). I consider there would be no injustice to either party if the red outline on each plan for each Notice were redrawn to exclude the other part.
4. The use of the term 'permanently' in requirements a, b, c, d and f for the Appeal A Notice and a, b, c, d and e for the Appeal B Notice are superfluous as the requirements of an enforcement notice have an enduring effect¹. I will therefore delete the word 'permanently' from those requirements. This would not cause injustice to either party.

Appeal A The Notice

5. In requirement e the building marked X on the plan is referred to as marked x (lower case). I will vary the Notice to ensure consistency between the allegation and the requirement identification. This would cause no injustice to either party.
6. Allegation (c) relates to the creation of a raised plateau and erection of a building for purposes ancillary to the unauthorised use of the land in the location marked 'X' on the Plan. Requirement (f) requires the removal of imported material on the land coloured brown on the plan attached to the Notice.
7. The area coloured brown on the plan, is not referred to in the allegation. At the site visit I saw that the area coloured brown included land that had not been raised to form a plateau for the building marked X. I will therefore remove reference to the land coloured brown on the plan in the requirements and simply require removal of the imported material deposited on the land under and around building shown marked 'X' on the plan used to create the plateau and restore this land to its condition before the plateau was created and the building erected. This would not cause injustice to either party.

¹ Section 181(1) of the Act provides that compliance with any of the requirements contained in an enforcement notice 'shall not discharge the notice'. Section 181(2) any requirement that a uses is discontinued shall operate as a requirement that it be discontinued permanently.

Appeal B The Notice only

8. In the Appeal B Notice plan an area is identified coloured black where imported material is alleged to have been deposited. I saw at my site visit that this area has been drawn to include land occupied by greenhouses. In my view, this was an error in drafting. As such, I will vary the area coloured black on the plan to exclude that which is occupied by greenhouses. This would not cause any injustice to either party.

Appeal A on ground (b)

9. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the Notice have occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities'.
10. The appellant states that they strongly contend the allegation that material has been imported to the site.
11. The appellant has not provided any substantiated evidence that material has not been imported onto the site. As such, the appeal on ground (b) fails.

Appeal A on ground (d)

12. This ground of appeal is that at the date the Notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, they need to show, on the balance of probabilities, that the mixed use comprising agricultural and residential use to a mixed use comprising residential, agricultural and use of land for open storage of scaffolding equipment, portacabins, shipping containers, skips, plant and heavy machinery, goods trailers, commercial vehicles, mixed waste, chattels, and equipment began more than ten years in respect of the material change of use and continued, without material interruption for a period of ten years thereafter before the Notice was issued. In relation to the operational development it must be shown it was substantially completed at least four years before the Notice was issued.
13. The Notice was issued on 8 June 2023 so the appellant needs to show that the material change of use began not later than 8 June 2023 and continued without material interruption for any ten year period. In relation to the operational development alleged the appellant needs to show that this was substantially completed not later than 8 June 2019.

The appellant's case

14. The appellant states that the land has been used in this manner since 1965. That the land was a previously coal and fuel merchants and that a commercial shop was erected and used by public.
15. Although reference is made to sworn affidavits and photographic evidence the appellant has not submitted these as part of the appeal written representations.
16. No substantiated evidence has been submitted in relation to the operational development.

The Council's case

17. The Council refer to an application reference 23/00700/CPE which sought a Certificate of Lawfulness for the use of the land for open storage, commercial use and retail outlet/shop. This was refused on 26 August 2023. The Council have provided the decision notice, location plan, application form, an affidavit sworn by Alan Arthur Rainbow on 22 June 2023 and three photographs of photographs in frames
18. In relation to the erection of the entrance gates and boundary wall the Council state that the google imagery does not show it in 2021 but it starts to appear in July 2022.

Reasons

19. The affidavit of Mr Rainbow states he took ownership of the land in 1986 from his parents and that he was involved and worked on the land since he was born. He states that land was used as a coal and fuel merchants since the early 1950's. It has also been used as a commercial open storage yard. A commercial shop was operated that facilitated the sale of fuel, aggregates and other items such as fruit and vegetables.
20. There is no plan attached to the affidavit and no plan is referred to in the affidavit to identify the land which is being referred to by Mr Rainbow. This affidavit fails to demonstrate in a clear and unambiguous way that the use which is referred to in that affidavit is on the land the subject of the Notice and that the historic use is not materially different from the mixed use which the Notice attacks.
21. The Council's Decision Notice identifies the photographs as images of Firs Farm, one of which is dated 1965 and the other two are undated. These do not support the appellant's contention that what is alleged is immune from enforcement action.
22. There is no substantiated evidence that any of the operational development within the allegation was substantially completed prior to 8 June 2019.
23. The evidence that has been provided fails to demonstrate that what is alleged, on the balance of probabilities, is immune from enforcement action through the passage of time. The appeal on ground (d) therefore fails.

Appeal A on ground (a)

Main issues

24. The appellant has only referred to the material change of use of the land and the erection of a building in relation to the ground (a) appeal. However, the allegations include other development, and I will therefore deal with all the development that is alleged.
25. The main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the development plan and the National Planning Policy Framework (the Framework) and effect on openness;

- The effect of the entrance gates and boundary wall on the character and appearance of the area; and
- If inappropriate development, 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.

The appeal site

26. Firs Farm is on the south side of Old Birmingham Road (B4096). To the south west and south east are private dwellings. The access also serves a semidetached pair of two storey dwellings, which are within the appellant's ownership. These dwellings are not within the appeal site. Set back from the road is the farmhouse and modern farm buildings.
27. Along Old Birmingham Road opposite the access to the appeal site, and along the road heading to the northeast, there are roadside hedges with open agricultural fields beyond.

Whether inappropriate development and effect on openness

Open storage Importation and deposition of material

28. Paragraph 155 of the Framework states that engineering operations (paragraph 155 b) and material changes in use of land (paragraph 155 e) are not inappropriate development if the development does not have a greater impact on the openness of the Green Belt, than the existing development. In this case existing development is how the site was prior to the development the subject of the Notice.
29. The storage of scaffolding equipment, portacabins, shipping containers, skips, plant and heavy machinery, goods trailers, commercial vehicles, mixed waste, importation of material and the engineering operations to create a raised plateau has a greater spatial effect on the land than what existed before. The storage also has a greater visual effect on the land.
30. Given the scale of the regrading of land and the quantity of storage and parking on the site I consider that the development as a whole has had a material adverse impact on openness. As such, the development is inappropriate.

Erection of building, entrance gates and boundary wall

31. Section 336 of the Act defines building as including any structure or erection. The building at X, the entrance gates and boundary wall are therefore all buildings.
32. The development plan includes the Bromsgrove District Plan 2011-2030 (adopted January 2017) (BDP). Policy BDP4 states that the development of new buildings in the Green Belt is considered inappropriate unless it is for one of seven exceptions.
33. A building for agricultural purposes is one of the seven exceptions. The appellant states that the building at X is a farm office and is thus not inappropriate as it is for agriculture. However, there is no substantiated evidence of the building being used in connection with agriculture.

Furthermore, even if it were to be used for agriculture, on the evidence available the erection of the building has not been demonstrated to be reasonably necessary for the purposes of agriculture and it is therefore inappropriate development in the Green Belt.

34. The entrance gates and boundary wall do not fall within any of the specified exceptions. As such, they are inappropriate development in the Green Belt.
35. Furthermore, the entrance gates, boundary wall and building at X both visually and spatially would harm openness of the Green Belt which is contrary to the Framework.

The effect on the character and appearance of the area

36. The entrance gates and boundary wall are extensive and appear as an urban incongruous intrusion into a rural setting. The gates and wall fail to relate to the wider physical context of the surrounding environment and fail to make a positive contribution to the area. As such, they fail to enhance the character and distinctiveness of the immediate area. I therefore find that they are contrary to Policies BDP19 and guidance in the High Quality SPD adopted in June 2019 which seek a high quality and standard of design in all development.

Other Considerations

37. The appellant considers that the material change of use is acceptable and would be permitted under permitted development rights. However, no further information is provided. This other consideration does not weigh in favour of the development.

Conclusion on ground (a)

38. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The development is therefore contrary to Policies BDP4 and BDP19 and guidance in the High Quality SPD. It is also contrary to the Framework. The appeal on ground (a) therefore fails.

Appeal B ground (c)

39. While the appellant has lodged a ground (c) appeal he has also put forward arguments that are more appropriate to a ground (b) appeal, so there exists a hidden ground (b) which I must deal with.
40. The hidden ground (b) is whether as a matter of fact the importation and deposition of material (including but not limited to) soil and rubble, and consequential engineering operations to create a hard standing in association with open storage use has taken place. On this legal ground of appeal, the onus of proof is on the appellant to make her case and the test is the balance of probabilities.
41. The appellant accepts that materials have been imported and engineering operations have been undertaken on the land the subject of the revised plan and coloured black. However, it is disputed that these are for the purpose of creating a hard standing in association with open storage use.

42. The appellant states the materials and engineering operations have been undertaken for the purpose of drainage works to alleviate the occurrence of waterlogging in the rear gardens of adjacent dwellings.
43. There is clearly a hardstanding and machinery has been stored in the area. There, is no substantiated evidence either in writing or as drawings, diagrams, to demonstrate the extent of 'drainage works' or what or why machinery has in effect been stored in the open on the hardstanding. The appellant has failed to demonstrate that what has been alleged has not taken place as a matter of fact. I find on the balance of probabilities that the importation and deposition of material (including but not limited to) soil and rubble, and consequential engineering operations to create a hard standing in association with open storage use has taken place.
44. Turning now to the appeal on ground (c). This ground of appeal is that matters alleged in the notice do not constitute a breach of planning control. On this legal ground of appeal, the onus of proof is on the appellant to make her case and the test is the balance of probabilities.
45. The appellant has provided no substantiated evidence that the importation and deposition of material (including but not limited to) soil and rubble, and consequential engineering operations to create a hard standing in association with open storage use has planning permission or is lawful. As such, the development is a breach of planning control and the appeal on ground (c) fails.

Appeal B ground (f)

46. This ground of appeal is that the requirements of the Notice are excessive and lesser steps would overcome the objections. The Council has confirmed that the purpose of the Notice is to remedy the breach of planning control which has occurred.
47. The appellant considers that the land identified on the plan attached to the Notice and the area coloured black are excessive. I have set out earlier that I will be substituting a new plan with a reduced area outlined in red and a reduced area coloured black. Requirements a, b, c and d relate to the area outlined in red on the plan, and requirement e relates to the area coloured black.
48. I am satisfied that the requirements, which now relate to a much smaller area outlined in red that does not overlap with the area identified in the other Notice and excludes the greenhouses from the area outlined in black, are not excessive and the minimum necessary to remedy the breach of planning control. The appeal on ground f succeeds to the extent of the variation of the area outlined in red and the area coloured black.

Appeal B ground (g)

49. An appeal on this ground is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed. The appellants claim that 1 month is insufficient, and a period of 12 months was initially requested. In the January 2024 document the appellant requested a 6 month period for compliance.
50. The appellant considers that the compliance period to remove all plant and machinery, remove imported material deposited on the land and restore the

profile of the land is completely unrealistic and unreasonable. However, the appellant does not provide any explanation in relation to the requested compliance period of 12 months.

51. I appreciate that the requirements are not insignificant and may take some time to organise to be fully complied with. While it may well be possible to remove plant, machinery, deposits and restore the land within a month, it will be likely that there would be a lead in time to organise it. However, I have no substantiated evidence to justify a 12 month or a 6 month compliance period.
52. The appellant does refer to being allowed to complete works to alleviate the occurrence of waterlogging the rear gardens of adjacent dwellings. However, I am not aware of any planning permission having been sought or granted for such works. Neither has it been demonstrated that such works are either not development or are permitted development. In the absence of substantiated evidence on such works being lawful I see no justification for extending the period of compliance beyond what is reasonable to organise compliance and carry out the requirements in full. In my view, a 3 month compliance period would allow for a short lead in time to organise the work and then adequate time to complete all the requirements.
53. For the reasons given above I conclude that a reasonable period for compliance would be 3 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Hilda Higenbottam

Inspector



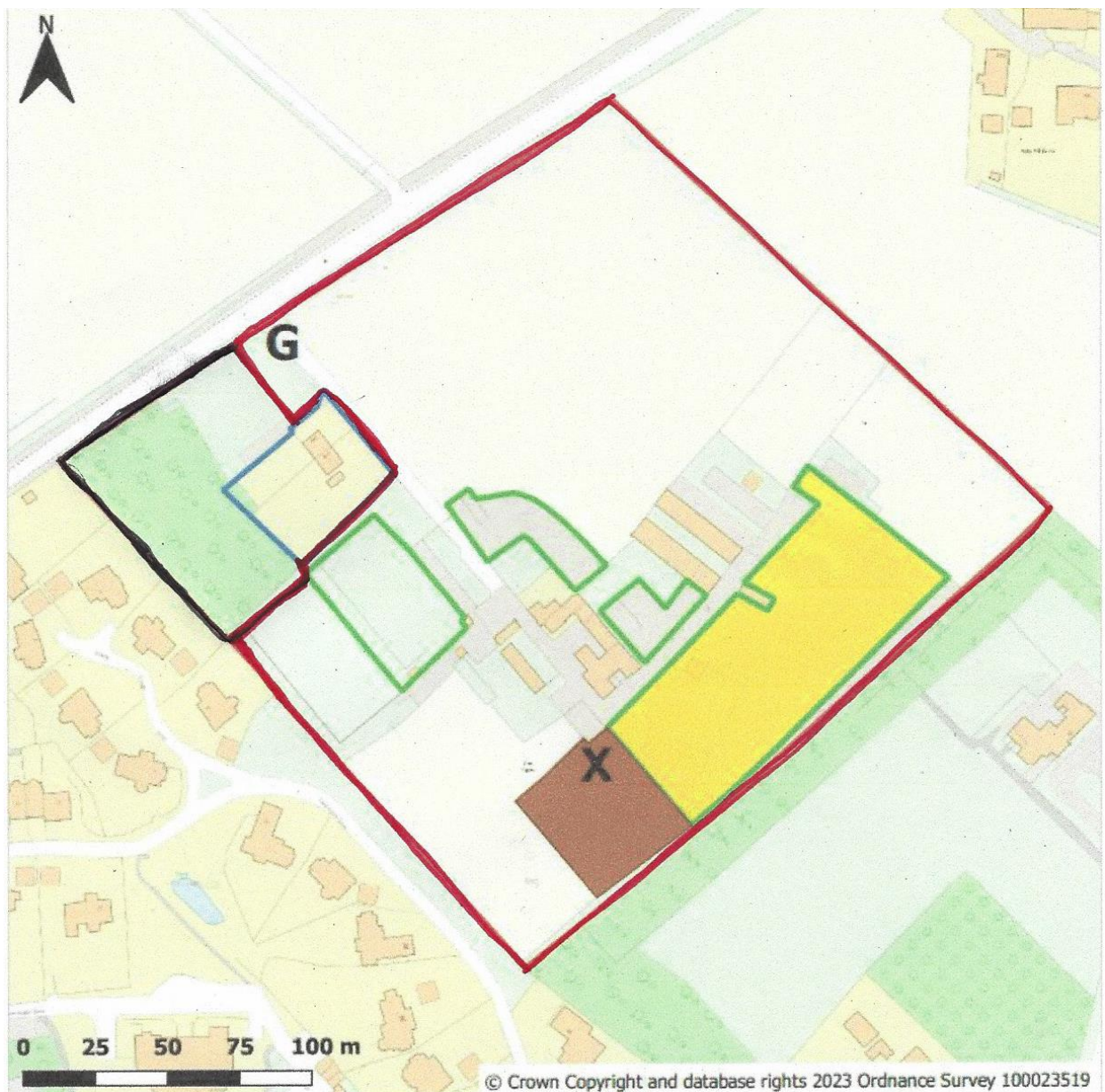
Plan A

This is the plan referred to in my decision dated: 2 September 2024

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at Firs Farm, 244 Old Birmingham Road, Marlbrook, Bromsgrove B60 1NS
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Scale: nts





Plan B

This is the plan referred to in my decision dated: 2 September 2024

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