

Appeal Decisions

Site visit made on 3 December 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 4 December 2024

Appeal A: Ref APP/G2245/C/22/3310954

**Fountain Farm, Well Hill Nursery, Firmingers Road, Orpington,
Kent BR6 7QH**

- 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 N Hyselli against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice was issued on 4 November 2022.
The breach of planning control as alleged in the notice is:
 - 1) The material change of use of a barn (as marked X on the attached plan) and external areas of the site to a B2 (light engineering) and B8 (storage) use.
 - 2) The erection of a structure (marked Y).
 - The requirements of the notice are to:
 - 1) Cease use of the barn (marked X on the attached plan) for B2 and B8 purposes.
 - 2) Cease use of all external areas within the red edged site plan for B2 and B8 purposes.
 - 3) Remove all machinery, equipment, tools, materials and any other miscellaneous items from the site linked to the B2 and B8 uses.
 - 4) Remove the structure (marked Y on the attached plan).
 - 5) Remove all waste from the site.
 - 6) Return land and barn to their previous condition.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since the appeal on ground (a) has been made, 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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Appeal B: Ref APP/G2245/W/22/3309508

**Well Hill Nursery, Fountain Farm, Firmingers Road, Orpington,
Kent BR6 7QH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Hyselli against the decision of Sevenoaks District Council.
 - The application Ref 21/01332/FUL, dated 26 April 2021, was refused by notice dated 20 September 2022.
 - The development proposed is remodelling of existing shed and change of use of barn.
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Decisions

1. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
 2. Appeal B is dismissed.
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Procedural Matters

3. The combined Design and Access/Planning Statement in respect of the planning application relevant to Appeal B says the proposal is to change the use of the main barn from B1 (Business) to B2 (General Industrial)¹, and to rebuild (remodel) the workshop (the shed) upon the footprint of the previous workshop damaged by fire and strong winds. To this extent, it is distinguished from the mixed use development targeted by the notice and which also refers to external areas. Structure Y referred to in the notice allegation is the partially rebuilt workshop (lacking a roof).

Appeal A ground (a) and Appeal B

Main Issues

4. The main issues in respect of both appeals are:
- whether or not the development constitutes inappropriate development in the Green Belt;
 - the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the Area of Outstanding Natural Beauty (AONB);
 - the effect of the development on the living conditions of nearby residential occupiers, particularly as regards noise and disturbance.
 - the effect of the development upon highway safety from any increase in vehicular activity.
 - would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal?

Reasons

Green Belt; Character and Appearance

5. Notwithstanding the M25 to the east, the site occupies a relatively isolated rural location accessible via quiet rural roads. Although there is sporadic housing, including 2 residential bungalows very close nearby, the closest settlement of size is a good distance away. The area is predominantly characterised by extensive fields and clusters of woodland interspersed by sporadic development including clusters of housing and some commercial activities such as stables to the west. The site and barn are visible within the street scene, set on elevated ground and clearly visible from public vantage points within a sensitive landscape inside the AONB.
6. Chapter 13 of the National Planning Policy Framework (the Framework) stresses that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

¹ As per the Use Classes set out in The Town and Country Planning (Use Classes) Order 1987 as amended.

7. Paragraph 154 of the Frameworks says that the construction of new buildings should be regarded as inappropriate in the Green Belt, with some exceptions. One of these exceptions is the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. I agree with the Council's Delegated Report that Structure Y/the shed sits upon previously developed land and is very similar in size and form to the long-established workshop it replaces. Accordingly, I do not consider that the replacement building would have a greater impact on the openness of the Green Belt than the existing development.
8. Turning now to change of use, Paragraph 155 of the Framework says that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it, such as assisting in safeguarding the countryside from encroachment. These include material changes in the use of land such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds. Use as represented by the appeal developments, involving change to a use for the carrying on of an industrial process (Appeal B) or one mixing such a general industrial use with use as storage or distribution centre (Appeal A), fall far from the character of the types of excepted uses in the Framework.
9. In any respect, even had a Framework exception applied, the industrial activities associated with the material change of use of the barn (Appeal A/B), even if putting to one side the 'solidifying' effect of its re-cladding arguably in connection with that use, appear not to preserve the site's openness or safeguard this countryside location from encroachment. In forming this judgement, I place significant weight on evidence from:
 - (a) the Council's case officer, who refers in the Delegated Report to a significant degree of clutter outside the barn related to a marble-cutting business seriously detracting from the otherwise relatively open and rural nature of the site. On his site visit he found outside the barn and spread around the site, large pieces of stacked marble together with two small fork-lift trucks, a skip, lorry body, a metal storage container and other associated equipment². I found similar on my own site visit;
 - (b) a neighbouring occupier, who refers to a "huge increase in traffic with lorries delivering and taking out the marble"³. The presence of such vehicles on a regular basis would not preserve the openness of the site or safeguard the countryside location from encroachment. The appellant has not dealt with the issue of alleged increased vehicular activity at the site in connection with the new use in any significant substantive way in his submissions on the appeals, and on the balance of probability I accept and place weight upon the evidence of the local witness.
10. For these reasons, the appeal developments represent inappropriate development in the Green Belt, significantly reduce openness and constitute encroachment of the countryside against the purpose of including land in the Green Belt.

² The appellant has provided, in his Appendix 2, aerial photographs which – notwithstanding difficulties of resolution of the detail – purport to show historic outside storage upon the land. However, very limited substantive evidence has been provided of when the change of use(s) commenced and so what appears to be a significant increase in external storage/deposits in later photographs may have been due to the appeal developments. I therefore give the photographs limited weight and they do not change my finding on this issue.

³ Representations made in respect to planning application which is the subject of Appeal B.

11. For the same reasons, there is significant harm to the character and appearance of this countryside location within the AONB – which the Framework, at paragraph 182, says should have the highest status of protection in relation to the conservation and enhancement of its landscape and scenic beauty. In accordance with that paragraph, which also says that the scale and extent of development within the AONB should be limited, I give great weight in relation to these issues.

Living conditions of nearby residential occupiers

12. The 2 bungalows at The Nursery are situated very close to the site. The occupiers have given evidence, through representations made against the Appeal B planning application, that the industrial process (which has taken the form of marble-cutting) creates intolerable noise which blights their lives and uncontrolled dust which pollutes their property. Further, it is said they have experienced a “huge increase in traffic with lorries delivering and taking out the marble”. While there is background noise associated with vehicular use of the M25, it seems to me that the extra – and closer – noise from lorries frequenting the appeal site would be likely to cause significant adverse noise impacts to the bungalow occupiers. I have also seen a representation from an (non-residing) owner of horses kept on Fountain Farm, which gives evidence contrary to the above, but I give that lone evidence less weight than the other representations made from people who dwell near the industrial process and who will, naturally, be more likely to have a greater degree of experience of it.
13. I have seen no substantive evidence from the appellant as to the noise (or dust) impacts of the development by way of any expert reports, or otherwise. Further no information or analysis has been provided in relation to vehicle movements and deliveries. The appellant says that the Council’s Environmental Health team hasn’t raised concerns (only suggesting a condition relating to permitted hours of delivery/collections/unloading) but given all of the evidence before me, I have concerns based on the character of the change of use and the proximity of – and impacts upon – local residents.
14. The appellant proposes a condition requiring the barn’s roller shutter doors to be kept closed, in the context of the noise issue. However, in the absence of a robust noise study showing otherwise, I am not persuaded that there would not be a significant adverse noise impact to local residents even if noisy work was only carried out behind closed roller shutters. Similarly a condition relating to external storage could not remedy harm associated with this issue.
15. For these reasons, I find that the appeal developments cause (and would cause even with a conditioned permission(s)) significant harm to the living conditions of neighbours particularly as regards noise and disturbance. In arriving at this finding, I have taken into account the element of lawful commercial use of the former workshop (relating to the storage and repair of electrical goods) but that fact does not affect my conclusions as to the impacts of the appeal uses upon the site.

Highway safety

16. Local roads to access the site are narrow and the site is relatively isolated. The appellant has not provided any evidence setting out the number of employees, work patterns and vehicular activities associated with the business.

17. However, the Framework is clear at paragraph 115 that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. I have no evidence of such impacts.

Other considerations

18. The appellant has not put forward that there are very special circumstances which would justify inappropriate development in the Green Belt.

Green Belt/planning balance

19. Paragraph 153 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found that significant harm is caused to the character and appearance of the AONB and to the living conditions of neighbouring occupiers. In totality, the harm is of a magnitude which weighs very heavily against the appeal developments.
20. Having considered all matters raised in support of the appeal development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the development is contrary to the guidance in the Framework and Policies LO1, LO8 and SP1 of the Council's Core Strategy⁴ and Policies EN2 and EN5 of the Council's Allocations and Development Management Plan⁵ which together seek to protect the Green Belt, character and appearance, and living conditions.

Conclusion on Appeal A ground (a) and Appeal B

21. For the above reasons, I will not grant planning permission as regards either appeal. Appeal B does not succeed, and ground (a) of Appeal A fails.

Appeal A 'hidden' ground (f)

22. I have a duty to be alert to grounds of appeal which have not been explicitly made, and to deal with them as far as possible. Such a 'hidden' ground of appeal appears to exist under ground (f) of Section 174(2) of the Act since it is implicitly argued by the appellant that the notice requirements are excessive.
23. Firstly, it is commented that the notice requires steps to be taken in relation to land associated with the previous workshop which is said to benefit from lawful B8 storage use. However, I do not uphold the appellant's concerns as the requirements of the notice – mirroring the allegation – require the cessation of the unlawful mixed use and the removal of items linked to that mixed use. The notice does not set out to extinguish pre-existing land use rights.
24. Secondly, it is said that the notice requires the land and barn to be returned to their previous condition but has not provided any evidence to inform the appellant what it means by "previous condition". However, I do not agree as the appellant will be the person with the best knowledge of what that previous condition was. It is clear, with reference to comments about the cladding of the barn and the green metal panels, that he does.

⁴ LOCAL DEVELOPMENT FRAMEWORK CORE STRATEGY - DEVELOPMENT PLAN DOCUMENT - ADOPTED 22 FEBRUARY 2011.

⁵ ADOPTED FEBRUARY 2015.

25. Accordingly, the appeal does not succeed on ground (f).

Appeal A ground (g)

26. For an appeal to succeed on this ground, I must be satisfied that the compliance period of the notice is unreasonably short.

27. The appellant's case refers to the war in Ukraine and 'the current economic crisis' (without going on to explain what that means for the appellant specifically or the business operating from the site). However, without further detail and evidence, I find neither of these reasons persuade me that 6 months is too short a time to carry out all the notice steps. It is a reasonable period of time, including to appoint builders to carry out the work.

28. Accordingly, ground (g) does not succeed.

Conclusions

29. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

30. For the reasons given above I conclude that Appeal B should be dismissed.

Andrew Walker

INSPECTOR