



Appeal Decisions

Site visit made on 13 November 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 DECEMBER 2024

Appeal A Ref: APP/M3645/C/23/3324919

Appeal B Ref: APP/M3645/C/23/3324920

Appeal C Ref: APP/M3645/C/23/3324921

1 Whitegate Farm Eastbourne Road, Blindley Heath, LINGFIELD, RH7 6LG

- These appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeals A, B and C are made by Mrs Jacqueline Verrechia, Joseph McCaul and Loretta McCaul respectively against an enforcement notice issued by Tandridge District Council.
 - The notice was issued on 30 May 2023.
 - The breach of planning control as alleged in the notice is a) The material change of use of the land from a grass amenity area to siting a residential caravan, which increases the number of residential caravans sited on the land. b) Operational development comprising the erection of an extension to the north western elevation of the caravan, formation of hardstanding and construction of a fence along the north eastern edge of the caravan pitch.
 - The requirements of the notice are: i. Cease the use of the caravan; ii. Remove the extension for the north western elevation of the caravan; iii. Permanently remove the residential caravan from the land; iv. Remove the fence that has been erected to the north eastern boundary of the area shaded blue on the attached plan; v. Excavate all hardstanding material from the area shaded blue on the attached plan to a depth where all the pre-existing earth prior to the formation of the hardstanding is exposed; vi. On completion of step v. above regrade the land to match the profile of the land immediately to the south and west and reseed the land with a native species grass mix; vii. Remove the material arising from compliance with 5(i) to 5(vi) above to an authorised place of disposal.
 - The period for compliance with the requirements is 7 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (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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Appeal D Ref: APP/M3645/W/22/3313583

1 Whitegate Farm Eastbourne Road, Blindley Heath, LINGFIELD, RH7 6LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mrs J Verrechia against Tandridge District Council.
 - The application Ref is 2022/838.
 - The development proposed is reduction of an earth bund along Eastern Boundary to a height of 1.5m and soft landscaping (Retrospective).
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Appeal E Ref: APP/M3645/X/22/3306426

Whitegate Farm, Eastbourne Road, Blindley Heath, LINGFIELD, Surrey, RH7 6LG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Jacqueline Verrechia against the decision of Tandridge District Council.
 - The application ref TA/2022/566, dated 25 April 2022, was refused by notice dated 5 September 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the area of hardstanding identified as Area 1.
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Decisions

Appeals A, B and C

1. The enforcement notice is quashed.

Appeal D

2. The appeal is allowed and planning permission is granted for the formation of an earth bund at a maximum height of 1.5m and soft landscaping at 1 Whitegate Farm Eastbourne Road, LINGFIELD, RH7 6LG in accordance with the terms of the application, Ref 2022/838, and the plans submitted with it subject to the conditions in the attached schedule.

Appeal E

3. The appeal is dismissed.

Procedural Matter

4. I had written to the parties to seek further details regarding whether there had been a previous notice issued regarding the breach and whether there were any other enforcement appeals relating to the site but have received no response. I have therefore determined the appeals taking into account the information before me.

Site History

5. The site has a complicated history and I do not believe that I have been provided with full details about it, or even copies of all of the enforcement notices previously issued and in force. However, an important event in the planning history of the site was the granting of LDC reference TA/2022/567 ("the 2022 LDC") for the "Permanent stationing of 3 no mobile homes for occupation with residential curtilage" on the north west part of the wider site. A previous LDC application reference 2020/156 ("the 2020 Application ") for the siting of 4 mobile homes had been refused and was not appealed. The 2020 application did not include a caravan sited on the same location as development as alleged in Appeals A, B and C.

Appeal A, B and C - Ground (b)

6. The notice alleges two breaches of planning control: material change of use of part of the land by the siting of a residential caravan; and operational development which includes and extension to the caravan, formation of hardstanding and construction of a fence.

7. The land identified on the notice is much wider than the area on which the alleged breaches within this notice have taken place. It is also larger than the area covered by the 2022 LDC. The Council has treated the wider site overall as one planning unit in a mixed use which includes an agricultural use and a residential element due to the siting of the caravans.
8. The aerial photographs provided show that there have been caravans on the site since at least 2009. The images appear to show different types and sizes of caravan, and sometimes in different places within the site; this is not unusual given the mobile nature of caravans.
9. In line with the 2022 LDC, the Council accepts that there is a residential element of use on the planning unit. Any change of use would therefore need to be material in order to constitute development as alleged in the notice. It also appeared during the site visit that there may also be some commercial uses on the site but it is not clear whether these are lawful, part of a mixed use or constitute separate uses. A commercial use has not been alleged in the notice.
10. The notice refers to an intensification of the residential use by the siting of an additional caravan for residential purposes but a fundamental change in the character of the use has not been shown in line with relevant case law. The Council argue that the LDC shows that there were lawfully 3 caravans on the site and there has been an increase of 66% in that there are now 5 caravans in total. The caravan, which is the subject of the notice, is in addition to the "fourth" caravan which was on the wider site at the date of the LDC applications and which was not included in the 2022 LDC granted but has remained there in any event.
11. The notice in these appeals only targets one caravan, and does not refer to the "fourth" caravan which was already on the site when the 2020 LDC application was made. The land as identified in the notice is extremely large. Whilst the area on which the caravan in these appeals is located had previously not been used for the siting of a caravan, the Council have not argued or shown that this smaller area (referred to as previously used as a grass amenity area) is a separate planning unit.
12. There is insufficient information before me to assess whether the overall site should in fact be considered as smaller, separate planning units, or to allow the land identified in the notice to be corrected in this way. Such a correction could not be done in any event without causing injustice to the appellant who has appealed the notice based on the wider mixed use site as alleged.
13. In any event, even taking into account the "fourth" caravan in addition to the caravan which is identified in the notice, there has not been a material change of use in the mixed use of the overall site caused by the additional residential use. The allegation in the notice regarding the use of the land is therefore incorrect. The operational development alleged, whilst a separate element of development, flows from the material change of use and cannot be determined in isolation from it as it may be that the parties' view is that it does not cause material harm when considered in association with the use. However, they have not had the opportunity to provide their views on this point.

14. As such, the matters stated in the notice (i.e. the material change of use as alleged) have not occurred. The appeal on ground (b) succeeds and the notice should be quashed.

Appeal D

15. The development for which permission is sought in Appeal D is for an earth bund along the Eastern Boundary to a height of 1.5m and soft landscaping. There had been some confusion during the course of the application as to whether the works were proposed or retrospective, but the matter before me is for the proposed bunds as detailed in the application and not for retrospective approval for the development as it on the ground (which is greater in height and mass). The description of development being determined is therefore the formation of an earth bund at a maximum height of 1.5m and soft landscaping.
16. The land is located in the Green Belt. The entrance to the site from the road is through a high gate, and the site boundaries predominantly consist of mature landscaping and hedgerow. There is a footpath along the western boundary of the site.
17. The main issues are whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2023) ("the Framework") and any relevant development plan policies; the effect of the development on the openness of the Green Belt; and whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.
18. Under section 155 of the Framework, engineering operations in the Green Belt are not inappropriate provided they preserve its openness and do not conflict with the purposes of including land within it. The earth bunds constitute engineering operations, and would not conflict with the purposes of Green Belt as set out in paragraph 143 of the Framework.
19. The effect of the engineering operations on the openness of the Green Belt must therefore be considered. The Council have stated that they would have refused this application because of the absence of information relating to the pre-existing, existing and proposed sites levels which meant that it was not possible to definitely establish the effect of the development on the openness of the Green Belt.
20. However, they state that the bunds would not have a harmful effect on the openness if they were no higher than 1.5m from the original land level (i.e. pre-existing levels before the unauthorised bunds were constructed). Whilst I have taken into account the uneven nature of the site and surrounding countryside, as well as the mature and dense landscaping along the site boundary adjacent to the bunds which separates it from the A22 highway, I am not satisfied that the proposed bunds to a height of 1.5m would not harm the openness of the Green Belt. The size and mass of the bunds, even at the relatively low height of 1.5m, are such that they would affect the openness, primarily by some partial views of the development by the entrance and spatially through the increased mass overall. The harm to the openness of the Green Belt would be limited due to the location of the development within the

site and wider countryside, existing features such as the hedgerow and road, and the fairly minimal impact that it will have visually. Due to the extremely limited views and nature of the development along the existing site boundary and route of the road it would not cause any other harm including to the landscape character and appearance of the area.

21. The purpose of the bunds is to provide noise attenuation in relation to the traffic on the adjoining road. The 2022 LDC confirmed that there is a lawful use of the site for residential purposes for the siting of 3 caravans. The proposed bunds lie between the road and location of these caravans, and will therefore provide noise attenuation which will have a positive effect on the living conditions of those occupiers.
22. The appellant has also proposed additional appropriate landscaping to include native hedging to mitigate the visual impact of the bunds. This can be secure by the imposition of a condition and will provide benefits in terms of both visual and environmental improvements to the site.
23. I attribute substantial weight to the harm to the Green Belt but I am satisfied that taken together, the benefits to the living conditions of the occupiers of the site and the environmental improvements, clearly outweigh this harm.
24. I therefore find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances which justify the development exist.
25. For the reasons set out above, the proposed development is in accordance with the Tandridge District Core Strategy 2008 and the Tandridge Local Plan 2014 (which form part of the development plan for the area) and the Framework. In the absence of any other material considerations to indicate otherwise Appeal D succeeds and planning permission should be granted subject the conditions set out below.

Conditions

26. Conditions 1, 2 and 3 are reasonable and necessary to provide certainty, reduce any harm to the Green Belt caused by the development and to ensure that it is carried out in accordance with the proposals.

Appeal E

27. The main issue is whether the Council's decision to refuse to grant an LDC for hard standing was well-founded.
28. Planning Practice Guidance advises that the applicant is responsible for providing sufficient information to support an LDC application, and that the evidence should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
29. As set out above, the site has a complicated history including the issuing of several enforcement notices. Whilst it is evident from the aerial photographs provided that there have been areas of hardstanding on the wider site for many years, I have simply been unable to understand from the information before me for which part of the site this LDC is being sought.

30. Although I gave the appellant the opportunity following the site visit to submit a precise plan, the only plan which has been provided is for the larger area of the southern part of the site. Compelling evidence has not been submitted to show that, on balance, this part of the site in its entirety has been covered in hardstanding. Indeed, during the site visit only part of this area had hardstanding or vehicles parked on it, and large parts of it were grass or vegetation.
31. The aerial photographs provided with the appeal have been annotated by hand but do not correspond to any plan that I have seen. In any event, the area in the photographs which appears to correspond to "Area 1" as referred to in the application and appeal forms covers a larger area than that which appears to show the hardstanding present in the aerial photographs. The parties also agree that there is an enforcement notice in force in relation to at least part of this land, but I have not been provided with a copy of this notice and so am uncertain as to the area covered by it.
32. The appellant has not precisely described the area of land which is the subject of the appeal nor discharged the required burden of proof.
33. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of hard-standing was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Zoë Frank

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following drawings and information: Location plan 16.06.2022, Block plan 16.06.2022, Planning statement 16.06.2022, Sections (104/22) 16.06.2022.
2. No part of the development shall be more than 1.5m in height from ground level and all additional material shall be removed from the land.
3. Notwithstanding Condition 1 no development shall take place until details of the soft landscaping and ground level works to include: a) details of soft landscaping works including a plan of all proposed and retained trees adjacent to the bund, hedges and shrubs; and b) details of the pre-existing, existing and proposed ground levels demonstrating that the bunds will not exceed the pre-existing ground levels by a height of more than 1.5 metres at any point; have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.