



Appeal Decision

Site visit made on 3 December 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: APP/C3620/C/24/3339794

The land known as Berry Farm, Blanks Lane, Newdigate, Dorking, Surrey RH5 5ED

- 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 Max Roberts of Bourne End Ltd against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice was issued on 30 January 2024.
 - The breach of planning control as alleged in the notice is: A. Without planning permission, the material change of use of the land to:- (i) The storage of caravans or stationing of caravans for leisure use in the areas numbered 1 on the attached plan; (ii) The storage and distribution of scaffolding in the area numbered 2 of the attached plan; (iii) The storage of waste materials in the areas numbered 3 on the attached plan; (iv) The storage of vehicles including lorries vans and plant in the areas numbered 4 on the attached plan; (v) The storage of wood and pallets in the areas numbered 5 on the attached plan; (vi) The growing of vegetables/fruit/flowers/fungi in various separate areas on the Land. And all the associated development facilitating the material changes of use which includes: (vii) The formation of hardstanding in the locations numbered 6 on the attached plan; (viii) The erection of fencing or means of enclosure, the extent of which is shown on the attached plan; (ix) The formation of an access, culverted ditch and roadways within the site the extent of which is marked on the attached plan. B. Without planning permission:- (i) The erection of buildings in the locations numbered 7 on the attached plan; (ii) The erection of a scaffolding structure in the location numbered 8 on the attached plan; (iii) The erection of shipping containers and portacabins in the locations numbered 9 on the attached plan; (iv) The erection of decking and wooden platforms in the locations numbered 10 on the attached plan; (v) The erection of a low wall structure in the location numbered 11 on the attached plan.
 - The requirements of the notice are: 1) Cease the use of the land for :- (i) The storage of caravans or stationing of caravans for leisure use; (ii) The storage and distribution of scaffolding; (iii) The storage of waste materials; (iv) The storage of vehicles including lorries, vans and plant; (v) The storage of wood and pallets (vi) The growing of vegetables/fruit/flowers/fungi in various separate areas on the land. 2) Remove from the land:- (i) All caravans; (ii) All scaffolding and associated paraphernalia; (iii) All waste materials; (iv) All stored vehicles including lorries vans and plant; (v) All buildings; (vi) The scaffold structure; (vii) All shipping containers and portacabins; (viii) All decking and wooden platforms; (ix) The low walled structure; (x) All hardstanding, in the locations shown on the attached plan; (xi) All fence and means of enclosure, the extent of which are shown on the attached plan; (xii) All roadways, the extent of which are shown on the attached plan. (xiii) The access gate and culverting of the ditch in the location shown on the attached plan.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matters

2. The enforcement notice has been issued over a comparatively large area of land, which is within multiple ownerships. Aside from my comments immediately below in respect of the enforcement notice, my assessment will be restricted to the developments which are brought to my attention by the appellant in the appeal before me.
3. The appellant contends planning permissions have been granted which have been partially implemented. This is however a matter for a ground (c) appeal. Injustice to the parties however does not arise from me considering this ground of appeal.
4. Since the enforcement notice was issued the Council has adopted a new development plan for its administrative area. The Mole Valley Local Plan 2020-2039, adopted October 2024 (the LP), therefore forms the development plan for the area and supersedes the local plan policies cited in the notice. The Council has then provided a list of the relevant adopted policies and the appellant has been provided with an opportunity to respond. Injustice to the parties therefore does not arise.
5. There has recently been a revised National Planning Policy Framework (the Framework) published by Government. It however does not raise new material planning considerations for the purposes of my assessment and therefore injustice to the parties does not arise.

The Enforcement Notice

6. A notice should be accompanied by an explanatory note which includes, amongst other things, details of the fee payable for the deemed planning application. Details concerning the applicable fee were however not provided. Instead, a request was specified to contact the Council to confirm the fee payable. When that was done, the appellant says they were simply referred to a website. Whilst this does not accord with procedural guidance, and is unhelpful, the appellant was still able to make a valid appeal and injustice to other parties has not been brought to my attention. Furthermore, I am not persuaded that the absence of the applicable fee represents a fundamental error or flaw that renders the notice null or invalid.
7. The notice alleges as part of the breaches of planning control a material change of use of the land to the growing of vegetables/fruit/flowers/fungi. These however relate to an agricultural use of the land which is thus not development for the purposes of Section 55(2)(e) of the Act and for which enforcement action cannot be taken. The notice can however be corrected without injustice to the parties by omitting this part of the allegation and the consequent cessation requirement.
8. The notice also requires that all buildings be removed from the land. There is however one building located along the southern boundary which does not form part of the alleged breach of planning control and consequently is not annotated on the notice plan, given it has been present since at least 2018 and so has likely acquired immunity. Some ambiguity however could arise and so I

will correct that requirement to remove the buildings already identified in the locations numbered 7 on the notice plan. Injustice would then not arise from making this correction.

The ground (e) appeal

9. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land.
 10. It is contended that two owners have confirmed in writing that they have not received a copy of the notice. However, there is no sworn evidence before me, and they were listed as parties who have been served by the Council. It is then not necessary to effect service physically on a person: to a last known place of abode is, amongst others, sufficient. I am also aware that one of those owners made a valid appeal¹, which undermines the overall contention.
 11. Whilst another owner who was served with a copy of the notice sadly passed away a month before the notice was issued, the Council could not reasonably have been aware of this. That land is however the subject of the matters raised before me in this appeal, and so substantial prejudice cannot be said to arise.
 12. Moreover, Section 172 of the Act was further satisfied as copies were also attached at site entrances, which is not disputed.
 13. It has therefore not been demonstrated that the notice has not been served on everyone with an interest in the land or that substantial prejudice to an interested party who is materially affected has arisen.
7. The appeal on ground (e) therefore fails.

The ground (c) appeal

14. For an appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
15. The appellant asserts in particular that three planning permissions² for various agricultural developments including the erection of polytunnels, barns, hardcore track, chicken coop and an agricultural storage building have been partially implemented.
16. It is contended that these permissions then relate to various developments for which enforcement action has been taken, in particular, an area of hardstanding and the low wall structure. However, there is very little evidence that demonstrates on the balance of probabilities these permissions were either lawfully implemented, and if so, then actually relate to development for which enforcement action has now been taken. The onus is firmly on the appellant to demonstrate their case that material operations comprised in the development had been undertaken, and it is thus not for me to cast around to try and ascertain whether or not this has been the case. During my site visit it was also not possible to draw any meaningful conclusions in respect of the relevance of works undertaken on the ground to those permissions. The case of the

¹ APP/C3620/C/24/3346381

² Refs: MO/2016/1502; MO/2019/2009; MO/2019/2191

appellant is therefore vague and ambiguous, and there is no sworn evidence to which I can afford significant weight.

17. Moreover, it is conceded that one of the barns as erected does not reflect that approved by virtue of the addition of 2 flat roofed wings. A subsequent retrospective planning application was also refused. Even if the central section does reflect the approval, a different building has nevertheless been erected and thus the planning permission cannot be said to have been lawfully implemented.
18. The mere digging of foundation trenches is then not enforced against. Even if this has therefore taken place, it is of little assistance to the appellant.
19. The appeal on ground (c) therefore fails.

The ground (d) appeal

20. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. To do so, any unauthorised use of the land enforced against would need to have taken place for a continuous period of 10-years, and any operational development undertaken substantially completed 4-years prior to the issue of the notice.
21. The appellant contends planning permissions have been granted at the site which have been partially implemented. This is however a matter for the ground (c) appeal, which I have considered above, and which has failed. I then have very limited precise and unambiguous evidence that the developments actually enforced against have accrued immunity owing to the passage of time.
22. I have then already corrected the notice to avoid any confusion in respect of the building located along the southern boundary.
23. The appeal on ground (d) therefore fails.

The ground (a) appeal

Main Issues

24. The main issues are:

- whether or not the developments constitute inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
- the effect of the developments on the character and appearance of the area;
- the effect of the developments on highway safety; and,
- If the development is inappropriate, 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.

Reasons

25. The appeal site before me relates to various small parcels of agricultural land, identified by the appellant as parcels 13, 17, 18, 19, 20, 21, 34, 64 and B. These parcels form part of a wider area of land that is the subject of the enforcement notice.
26. The appellant then identifies what are contended to be agricultural developments on the various parcels of land for which they require consideration under the deemed planning application. These can be broadly summarised as: hardstandings, various small to medium sized structures, sheds and polytunnels, low walled structure, various storage containers and various types of fencing. It is asserted that the use of these parcels of land are for agriculture and as a tree plantation, which accordingly would not need planning permission.

Whether inappropriate development in the Green Belt

27. The site is located in the Metropolitan Green Belt.
28. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 142 of the Framework states that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development. Paragraph 143 then specifies the five purposes which the Green Belt serves, including to assist in safeguarding the countryside from encroachment.
29. As I have already noted, my assessment is confined to agricultural or forestry developments.
30. Paragraph 154 of the Framework then lists exceptions to inappropriate development in the Green Belt, which includes buildings for agriculture and forestry. The construction of new buildings for agriculture or forestry is accordingly not inappropriate development. Policy EN1 of the LP also lists exceptions to the definition of inappropriate development, which includes buildings or other structures for which it has been demonstrated are reasonably necessary to support agriculture, horticulture or forestry, in accordance with policy EC6 of the LP. Whilst that latter policy is not before me, policy EN1 of the LP is then broadly consistent with the Framework given there is no requirement to demonstrate reasonable necessity for the purposes of the assessment of inappropriate development.
31. Policy S1 of the LP is then concerned with the overall strategy for the pattern and scale of development in the District and to make sufficient provision for various land uses. It is therefore not directly relevant to my assessment of inappropriate development in the Green Belt for the purposes of this appeal.
32. I therefore conclude that agricultural and forestry developments are not inappropriate development and so by definition are not harmful or contrary to national policy to protect the Green Belt. Accordingly, I do not need to consider whether there are any very special circumstances necessary to justify the developments. The absence of this planning harm therefore attracts neutral weight.

Character and appearance

33. The wider area is largely rural and characterised by open fields and woodlands. There are some pockets of residential and larger agricultural development. The appeal site forms various small parcels of land. Other parcels of land remain the subject of various developments, most of which I am aware have been unauthorised.
34. By contrast with the surrounding rural character of the area, the site has been subdivided into a number of land parcels, most of which are small. This has then facilitated the presence of a large number of ad hoc structures and other developments such as fences and hardstandings. Even if they are all reasonably required for agricultural purposes, whether cumulatively or in isolation, they appear incongruous and seriously undermine the rural and open character of the area.
35. I accept that some of the developments are small and low level and might be reasonably required for the purposes of agriculture. Nevertheless, they are not well contained and are largely unrelated to mature site boundaries. In the instances when they are well related, they are conspicuous in views from the road. Whether cumulatively or in isolation, they therefore significantly detract from the landscape character of the area. They are also not of high-quality design by virtue of their ad hoc siting and makeshift appearance.
36. I therefore do not accept that the balance of land and buildings is consistent with the pattern and character of the surrounding area, or that the various elements sit comfortably. Even if some views are screened from the public realm, it does little to assist in safeguarding the intrinsic qualities of this agricultural land. The developments are therefore not sensitive to their landscape context.
37. I appreciate the site is not within an AONB or an identified Area of Great Landscape Value, but this also does little to assist in mitigating the aforementioned harm.
38. I conclude the developments whether cumulatively or in isolation are unacceptably harmful to the character and appearance of the area in contravention of Policies EN8 and EN4 of the LP. These policies, amongst other things, require development to where appropriate be sensitive to their landscape context and be of high-quality design that makes a positive contribution to local character. This is a planning harm to which I attach considerable weight.

Highway safety

39. The existing vehicular access point from the highway is also shared by the owners of other land/parcels. This does not allow for the simultaneous entry and exit of vehicles.
40. Whilst I accept that the vehicular access would be substandard and could cause danger and inconvenience to highway users were other non-agricultural uses to remain, those developments are not before me. I am then not persuaded that the agricultural developments would lead to an increased level of trip generation or manoeuvrability issues that would be severe or result in an otherwise unacceptable impact to highway safety, given the lawful agricultural use of the site.

41. I conclude the developments are not harmful to highway safety and so accord with Policy INF1 of the LP, which seeks, amongst things, for development to not have an unacceptable impact on highway safety. For the same reasons the development accords with the highway safety objectives of the Framework. The absence of this planning harm attracts neutral weight.

Other Considerations

42. Whilst agricultural developments have previously been granted planning permission, the site would appear to have since been sold into various small parcels of land. Even if I am wrong, the existence of previous planning permissions and subsequent evidence before me does not provide sufficient evidence of an essential agricultural need, economic benefit or fallback position which convinces me that planning permission should be granted. A split decision or conditional planning permission would therefore not be appropriate for the same reasons. I therefore afford this consideration very limited weight.
43. The cessation of the unauthorised uses and removal of other developments at the wider site then does not result in a reduced cumulative impact, it merely returns the land to its lawful agricultural use. I therefore afford this consideration very limited weight.
44. The Council have also raised concerns regarding the adequacy of drainage and to highlight the site is within flood zones 2 and 3. However, given the deemed planning application relates to only agricultural developments, and in light of my above findings, I need not assess these considerations further.

Planning Balance

45. The agricultural developments the subject of this deemed planning application do not constitute inappropriate development. The absence of such harm attracts neutral weight, as does the absence of an unacceptable impact to highway safety. There is however unacceptable harm to the character and appearance of the area, which attracts considerable weight, and which is not outweighed by other considerations.

Conclusion

46. There are no material considerations that indicate the ground (a) appeal should be determined other than in accordance with the development plan. For the reasons given and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) fails.

The ground (g) appeal

47. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and that 12 months would be reasonable because the uses and buildings are in some cases substantial and will take time to demolish and remove, and businesses will need to relocate.
48. An appellant is entitled to await the outcome of their appeal. There is however very little evidence to substantiate as to why the time given to comply with the requirements of the notice is too short. I appreciate that businesses may or may not as a result of the corrected notice need to relocate and that an owner has since passed away. This however does not convince me that the period given is too short.

49. The period of 6 months therefore strikes the appropriate balance to then not unduly perpetuate the breaches of planning control.

50. The appeal on ground (g) therefore fails.

Overall Conclusion

51. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice subject to corrections.

Formal Decision

52. It is directed that the enforcement notice be corrected by:

- deleting allegation 3. A (vi) from the notice
- deleting requirement 5. 1) (vi) from the notice
- substituting the words '*The buildings in the locations numbered 7 on the attached plan;*' for the words at 5. 2) (v) of the notice

53. Subject to these corrections the appeal 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.

Paul T Hocking

INSPECTOR