



Appeal Decision

Site visit made on 25 February 2025

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/U4610/C/24/3342467

Land adjacent to Oxford Canal, Shilton Lane, Coventry, CV2 2AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Glenn McFall of G&R Scaffolding Limited against an enforcement notice issued by Coventry City Council.
- The notice was issued on 15 March 2024.
- The breach of planning control as alleged in the notice is without planning permission, the use of the Land for the storage of scaffolding and associated building / construction equipment and the formation of associated hardstanding and the siting of associated shipping containers, cabin/office buildings and storage stillages.
- The requirements of the notice are to permanently cease the use of the Land for the storage of scaffolding and associated building/construction equipment and remove from the Land all scaffolding, building/construction equipment and associated hardstanding, shipping containers, cabin/office buildings and storage stillages; returning the land to an appearance similar to that which was in situ previously; and permanently remove from the Land all building materials and waste arising from compliance with this requirement.
- The period for compliance with the requirements is twelve calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. A new version of the National Planning Policy Framework (the Framework) has been published since the Enforcement Notice was issued. Both main parties have had an opportunity to comment on any implications with respect to the current appeal. Therefore, I have had full regard to the Framework in determining this appeal.

The appeal on ground (d)

2. The ground of appeal is that at the time the enforcement notice was served, it was too late to take enforcement action against the matter stated in the Notice. The appellant does not dispute that the use of the land for the storage of scaffolding represents a breach of planning control; however, he does consider that the creation of a hardstanding is lawful and is immune from enforcement action as it constitutes an engineering operation and was substantially completed in 2019. An aerial photograph dated 2019 shows a large area of hardstanding in place. My understanding from the evidence is that part of the site was surfaced prior to first using the site following the outbreak of Covid and then the remainder of the site was hard-surfaced shortly after this.
3. However, aerial imagery also shows that part of the site was covered with hard surfacing in 2010 and 2013. By 2018 it appears that the hard surfaced area had

become overgrown, but it is not clear whether or not it had been completely removed.

4. The courts have held¹ that an enforcement notice directed at a material change in the use of land can require the removal of ancillary operational development (hardstanding within a transport yard) within the ten year immunity period applying to a material change in use, even if the four year time limit has passed, if the works were intended to facilitate the unlawful use. In another more recent case² it was held that the *Murfitt* principle only applied where operational development is deemed ancillary to the change of use. Where operational development has brought about the change of use the *Murfitt* principle cannot apply.
5. In this case the operational development undertaken on site, including the formation of the hardstanding, is ancillary to the unauthorised material change of use of the land for the storage of scaffolding and associated building/construction equipment. Although they have partly facilitated the change of use that has taken place, they are subordinate to it and the unauthorised use of the land could have occurred without the ancillary operational development. As such they cannot be separated and are part and parcel of the same unauthorised development.
6. I am also aware that on 18 June 2010 the Council served an enforcement notice on the land which remains extant as it has not been fully complied with. In the absence of clear evidence to the contrary, the Notice stopped the clock on the large hardstanding area on the appeal site which has subsequently been consolidated more recently. Since the unlawful hardstanding remains in place, the consolidated version of it which was on site at the time the current enforcement notice was served, cannot be immune from enforcement action through the passage of time.
7. Therefore, the appeal on ground (d) cannot succeed.

The appeal on ground (a)

8. The ground of appeal is that planning permission should be granted. The main issues derived from the Enforcement Notice are:
 - i. Whether the development is inappropriate development in the Green Belt having regard to the development plan and the Framework;
 - ii. The effect on the character and appearance of the area; and
 - iii. If the development is inappropriate development in the Green Belt, whether any harm by reason of inappropriateness, or any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development

9. The Government attaches great importance to the Green Belt and its essential characteristics of openness and degree of permanence. When considering any planning application local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. The Framework states that development in the Green Belt is inappropriate, subject to a number of exceptions. These include “154 h) *Other forms of development provided*

¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598

² *Caldwell & Timberstone Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

they preserve its openness and do not conflict with the purposes of including land within it. These are:

v. material changes in the use of the land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)”

10. The Council also considers the development conflicts with Policies GB1 (Green Belt and Local Urban Green Space) and GB2 (Reserved Land in the Green Belt) of the adopted Coventry City Council Local Plan Adopted 6 December 2017 (the LP). Policy GB1 reflects National Policy in that inappropriate development will not be permitted unless very special circumstances exist. Policy GB2 relates to safeguarded land in the Green Belt stating that any development of the identified sites will be subject to consideration through a full or partial review of the LP.
11. Although the LP policies do not fully reflect the latest version of the Framework with regard to development in the Green Belt, they reflect the overall direction of protecting the Green Belt from inappropriate development except in very special circumstances. Therefore, I am satisfied that Policies GB1 and GB2 are generally consistent with the Framework, and I give them substantial weight.
12. The unauthorised development the subject of the enforcement notice is a use of land and the material change of use in the use of land is not inappropriate development within the Green Belt provided the openness is preserved and do not conflict with the purposes of including the land in the Green Belt.
13. The appeal site is partly screened by landscaped boundaries and it is also isolated from its surroundings by the M6 motorway and the Oxford Canal. Nonetheless it is an important area of land within the designated Green Belt and that point cannot simply be ignored. The concept of openness has a spatial and visual aspect and that has been established and debated in the Courts. It is not sufficient to assess the impact on openness on the increase in the volume of development or the amount of development proposed, but the visual aspect of the Green Belt should also be considered alongside the overall purposes of including the land within it.
14. The appellant argues that the works are barely visible from public vantage points, but I dispute this. From the motorway, in particular, the physical features of the unauthorised development are clearly visible. I understand that at certain times of the year when hedges and trees are in leaf there may be greater degree of screening, but at the time I visited the site and surroundings this was not the case. As such I find that the development is harmful from a visual openness perspective.
15. With respect to the spatial aspect of openness, there is a physical element to the unauthorised development that has taken place, including the hardstanding area, stored scaffolding and associated building and construction materials, racking, cabin/office and shipping container. As such there is a spatial aspect of openness that is harmed by those physical elements. I accept that buildings on the site may have a greater impact, but that does not detract from the effect on openness caused by the development before me. Furthermore, I am aware that the quantity of stored materials on site fluctuates over time as demand for scaffolding changes and, consequently, there may be periods of time when the quantity of materials increases with resultant increased harm to the openness of the Green Belt.
16. In the light of the new Framework, the appellant contends that the land in question is previously developed land and therefore that the development the subject of this

appeal falls within one of the exceptions in Green Belt policy. However, there is a new definition of previously developed land which is fundamentally different from the previous definition. The updated version defines it as being “Land which has been lawfully developed”.

17. There is insufficient evidence before me that the appeal site has been lawfully developed through the benefit of planning permission or immunity from enforcement action through the passage of time. The overall purpose of the change in definition of previously developed land is clearly to prevent unauthorised uses and operational development taking place in the Green Belt which may then in the future fall within one of the exceptions to Green Belt policy by being considered as previously developed land. This change also reflects concerns set out in the Written Ministerial Statement dated 17 December 2015 about the harm caused where the development of land has been undertaken in advance of obtaining planning permission.
18. In the absence of evidence of the building or use of the land being lawful the appeal site cannot be defined as being previously developed land. As such the development before me cannot be defined as being the redevelopment of previously developed land and does not fall within one of the exceptions set out in the Framework.
19. Paragraph 155 of the Framework states that the development of homes, commercial and other development in the Green Belt will not be regarded as inappropriate where:
 - a. the development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
 - b. there is a demonstrable need for the type of development proposed,
 - c. the development would be in a sustainable location with particular reference to paragraphs 110 and 115 of the Framework, **and**
 - d. where applicable the development meets the “Golden Rules” requirement set out in paragraph s 156-157.
20. Grey belt is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. Grey belt excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development. Previously developed land is land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land. It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed. Therefore, in determining this appeal it is important to clarify that any land can, in fact, be grey belt – not just previously developed land. As such, I need to make an assessment about whether the appeal site contributes to the purposes of Green Belt as set out in paragraph 143 of the Framework.

21. The appeal site is a linear area of land between the motorway and the Oxford canal with open agricultural land and a cemetery to the East. As an open area of land prior to the unauthorised development taking place it has an important function of contributing to the openness of the area and it contributes to checking the unrestricted sprawl of large urban areas and prevents neighbouring towns merging into one another.
22. Furthermore, the appellant contends that suitable sites for this type of development are difficult to find. However, there is no evidence of alternative sites that have been looked at or what the appellant has even done to find an alternative site. Specifically, with respect to this point, there is no demonstrable need for the type of development proposed.
23. Finally, on this point, the development does not meet the “Golden Rules” requirement set out in paragraph 156 which relates to major housing development proposed on land released from the Green Belt through plan preparation or review and affordable housing, among other things.
24. For these reasons, the appeal building harms the spatial and visual openness of the Green Belt and is an encroachment into the countryside. The scaffolding and associated building / construction equipment and the siting of associated shipping containers, cabin / office buildings and storage stillages harm the spatial openness of the Green Belt and would also encroach into the countryside. The appeal development is, therefore, inappropriate development in the Green Belt and conflicts with Policies GB1 and GB2 of the LP and with the Framework, in this regard.

Character and appearance

25. The appellant’s Landscape and Visual Impact Assessment sets out that the development does not appear incongruous within the urban fringe landscape given its segregation from its surroundings by the M6 Motorway, the canal and other transport routes. However, although there are landscaped boundaries to the site, it can be seen in its wider context within the relatively open Green Belt, including from the motorway and canal embankment. Overall, in my judgement it is a visually incongruous addition to the local landscape, at odds with the relatively open Green Belt surroundings and harmful to the character and appearance of the area.
26. The appellant contends that the effect of the enforceable element of the overall development is very limited and even less than that assessed in the LVIA which does not take account of the area of hardstanding. However, the combined elements of the unauthorised development against which the Council is seeking to enforce are together visually harmful and incompatible with their surroundings, taken individually and cumulatively.
27. I have taken account of potential conditions that could be attached to any planning permission in order to mitigate visual harm. These include a landscaping scheme and restrictions to the location and the height of stored items within the site. Whilst these may go some way to screening the development and limiting visibility I am not fully satisfied that the degree of harm caused by the development could be satisfactorily mitigated.

28. As such I conclude on this issue that the development is harmful to the character and appearance of the area and conflicts with Policy DE1 of the LP and the Framework. Among of the things, the policy seeks to ensure that all development proposals respect and enhance their surroundings and positively contribute towards the local identity and character of the area.

Other considerations

29. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reasons of inappropriateness, and any other harm resulting from the appeal development, is clearly outweighed by other considerations.
30. The appellant contends that the lack of impact on the openness of the Green Belt and that the site has limited value when considering the purposes of the Green Belt are very special circumstances. However, I have found above that the development is harmful to the openness of the Green Belt and conflicts with the purposes of including the land within it and conditions would not satisfactorily mitigate the harm I have found.
31. It is also presented that there is strong national and local support for economic growth by supporting local businesses. The scaffolding business operates from the site which supports 32 employees, many of whom live close to the site. In addition, the business invests in training and has good relationships with local schools and employs apprentices. There is little evidence setting out why the appeal site is preferable to the operation of the scaffolding business than other local sites, including nearby industrial estates. It is my understanding that the business originally operated from a location some 3 miles away and the evidence before me is that there are numerous vacant industrial premises within such a radius that may be suitable and available for the business' requirements.
32. Therefore, although I can see that there are some economic and related benefits from the business, there is inadequate clear justification for why the business should be located on this site within the Green Belt. Taking this into account alongside the lack of other factors amounting to very special circumstances, I find that the other considerations in this case, as set out above, do not clearly outweigh the harm to the Green Belt I have identified. Consequently, the development is inappropriate development in the Green Belt and the harm by reason of inappropriateness, and harm to the character and appearance of the area, is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development. Therefore the appeal development conflicts with the development plan as a whole and the Framework.

The appeal on ground (f)

33. The ground of appeal is that the steps required to be taken by the enforcement notice exceed what is necessary to achieve that purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the use to permanently cease and remove from the Land all scaffolding, building/construction equipment and associated hardstanding, shipping containers, cabin/office buildings and storage stillages; returning the land to an

appearance similar to that which was in situ previously; and permanently remove from the Land all building materials and waste arising from compliance, the purpose is clearly to remedy the breach. Continuing any part of the use or leaving any part of the development in place would not achieve that purpose.

34. The appellant argues that the hardstanding is immune from enforcement action and it is therefore excessive to require its removal. I have found under ground (d) that the hardstanding is not immune from enforcement action and therefore the requirement to remove it is not unlawful. In addition, the appellant contends that the access and much of the southern part of the site and shipping container were in situ prior to the appellant purchasing the site. However, there is insufficient evidence of the lawfulness of other items covered in the Notice through the passage of time or otherwise. Consequently, the appeal on ground (f) fails.

The appeal on ground (g)

35. The ground of appeal is that the time given to comply with the requirements is too short. The twelve months given would be sufficient to cease the use, remove from the Land all items and waste arising with compliance with the requirements. I understand the appellant's need to find an alternative site and the suitability of the existing site for the business. Nonetheless, I consider the suggested period of at least 2 years to be excessive and in any case the 12 months given is entirely reasonable given the ongoing harm caused by the development. As such the appeal on ground (g) does not succeed.

Formal Decision

36. 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.

A A Phillips

INSPECTOR