



Appeal Decision

Site visit made on 30 January 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/A1910/C/23/3315084

Land at Berry Farm, Upper Bourne End Lane, Hemel Hempstead

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Rachel Wiseman against an enforcement notice issued by Dacorum Borough Council.
 - The notice was issued on 16 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the siting of 3 steel clad containers and the erection of post and wire fencing.
 - The requirements of the notice are:
 1. Disconnect and remove from site the air conditioning/heat pump units from the containers.
 2. Remove from the site the 3 containers and all cladding.
 3. Remove from site any fixings or footings associated with the containers.
 4. Remove from site any hard standing from underneath the containers.
 5. Restore the ground beneath the containers to its original condition and appearance prior to the breach of planning control.
 6. Remove all fence posts and any concrete used to secure any of the posts.
 7. Remove all gates from the site.
 8. Remove all stock wire fencing and any fixing from the site.
 9. Restore the ground, associated with steps 8-10, to its original condition, level and appearance prior to the breach of planning control.
 10. Remove any debris arising from any of the steps 1-9 above from the land.
 - The period for compliance with the requirements is: Six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), and (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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Decision

1. It is directed that the enforcement notice is corrected by replacing section 2 with the following paragraph:

“2. THE LAND TO WHICH THE NOTICE RELATES

Land at Berry Farm, Upper Bourne End Lane, Hemel Hempstead as shown edged red on the attached plan”

2. Subject to the above correction, 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.

Preliminary Matters

3. The revised National Planning Policy Framework 2024 (“the Framework”) came into force during the course of the appeal. The parties were given an opportunity to comment on this and the submissions made have been taken into consideration.

The Notice

4. Section 2 of the enforcement notice describes the land to which the notice relates as “Land at Berry Farm, Upper Bourne End Land, Hemel Hempstead”. This includes a spelling mistake as the road name should read “Upper Bourne End Lane”. I am authorised by section 176(1)(a) of the Town and Country Planning Act 1990 to correct any defect, error or misdescription in the notice, if I am satisfied that no injustice will be caused. Given that both parties clearly understood the land to which the notice relates, this minor typographical error can be corrected without any injustice occurring.

Ground (a) – the deemed planning application

Background and Main Issues

5. The appeal site is a small parcel of land located within the Metropolitan Green Belt and is accessed via an access track off Upper Bourne End Lane. The site is used for the housing and breeding of pigs and comprises three timber clad storage steel containers each measuring approximately 9.75m in length and 3m in width, along with pig paddock areas which are enclosed with post and wire fencing.
6. On 17 July 2020 the Council issued an enforcement notice in relation to “*the material change of use of land from agricultural to, pig breeding enterprise, with associated operational development*” at the appeal site. A subsequent appeal¹ was allowed on 16 September 2021 (“the 2021 appeal”) and the notice was quashed. In summary the notice was quashed as it was not found, on the balance of probability, that the use of the land as a pig breeding enterprise had resulted in a material change of use of the land. However, it remained open to the Council issue a further notice in respect of the operational development on the site, should they consider it expedient to do so.
7. On 9 February 2022 the Council refused a planning application² at the appeal site for “*three steel containers (clad in timber) and post and rail fencing*”. An appeal³ against the Council’s decision to refuse that application was dismissed on 16 November 2022 (“the 2022 appeal”). An enforcement notice was subsequently issued on 16 December 2022 in relation to the steel containers and post and rail fencing, out of which this appeal arises.
8. The main issues in this appeal are therefore:
 - Whether the development is inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies;
 - The effect of the development on the openness and purposes of the Green Belt;
 - The effect of the development on the character and appearance of the area; and

¹ APP/A1910/C/20/3257704

² Council Ref: 21/04223/RET

³ APP/A1910/W/22/3294517

- Whether any 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.

Whether inappropriate development in the Green Belt

9. The Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings and other forms of development should be regarded as inappropriate development in the Green Belt, subject to several exceptions as set out in paragraphs 154 and 155 of the Framework.
10. I am mindful of the recent changes to the Framework, which introduced changes to paragraph 155 and the concept of grey belt land. When given the opportunity to provide comment on the recent changes to the Framework, neither party indicated any change to their case or that the appeal site constituted grey belt land. Nevertheless, for completeness it is necessary for me to address the changes introduced to the Green Belt policies in the Framework.
11. The appeal site is not identified as previously developed land, however in my view it is other land that does not strongly contribute to any of the purposes set out in (a), (b), or (d) of paragraph 143 of the Framework. It is therefore grey belt land. Nonetheless, paragraph 155 states that, to avoid being inappropriate development in the Green Belt, development on grey belt land must meet other criteria. These include there being a demonstrable unmet need for the type of development proposed. I have not been provided with any evidence to show that there is a demonstrable unmet need for the development that has been carried out. Accordingly, based on the evidence before me, the development is not compliant with paragraph 155 of the Framework.
12. The appellant contends that the development subject of the notice accords with the exception in paragraph 154 (a), being buildings for agriculture and forestry. A “building” is defined in section 336(1) of the 1990 Act to include “*any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building*”. Given the permanency of the altered containers it is reasonable to conclude that the containers, as well as the fencing, can be included in this definition.
13. Agriculture is also defined in section 336(1) of the 1990 Act and includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds.
14. Policy CS5 of the Dacorum Core Strategy 2006-2031 (adopted September 2013) (CS) states that national Green Belt policy will be applied to protect the openness and character of the Green Belt, local distinctiveness and the physical separation of settlements. Within the Green Belt, small-scale development will be permitted including building for the uses defined as appropriate in national policy. Policy CS5 is therefore largely consistent with the Framework.
15. The appellant has set out that, in her view, the land is in agricultural use and the containers are agricultural buildings required for the lawful keeping and breeding of pigs on the site. In particular, the appellant refers to the 2021 appeal where the

Inspector found that the pig breeding enterprise had not resulted in a material change of use of the land. Consequently, the lawful use of the land remained as agricultural.

16. However, whilst accepting that the previous appeal decision was a material consideration, the Inspector in the 2022 appeal reflected that an overall assessment had to be carried out as to whether the containers were agricultural. He set out that the containers were being used for the storage of equipment, feed and materials, basic daytime catering facilities and the keeping of hay/straw. One container was laid out with straw to accommodate pigs. The containers were used for the same purposes at the time of my site visit, and based on the evidence before me do not appear to have materially changed since the 2022 appeal.
17. In determining the 2022 appeal the Inspector also found that the need for storage areas for equipment and materials would not be great given the small size of the site and observed that there were less than 10 pigs on site during his site visit, whereas there had been 15 pigs present in the 2021 appeal. Although my site visit represents a snapshot in time, it was clear that there had been a further reduction in the number of pigs on site with only 6 pigs present at the time of my visit. Moreover, the previous Inspector also found that the use of a metal storage container, with domestic sized doors as an animal shelter for 6 female pigs was not persuasive justification that the buildings were agricultural.
18. Drawing all these points together, the Inspector in the 2022 appeal found that the size, design, and steel construction of the containers were unjustified in relation to agricultural use and therefore, it had not been demonstrated that the buildings were agricultural and accordingly they represented inappropriate development.
19. Save for the further reduction in the number of pigs being kept at the site, the use of the three containers does not appear to have changed since the 2022 appeal. The appellant has also not provided any tangible evidence to demonstrate how the position has changed or why the containers should now be considered as agricultural buildings. The application of the grey painted timber cladding to the containers has not assisted in that regard. I therefore agree with the findings of the previous Inspector and conclude that it has not been demonstrated that the three containers are agricultural, and that consequently they amount to inappropriate development in the Green Belt.
20. With regards to the post and wire fencing erected at the site, the appellant contends that the fencing is required in connection with the keeping of pigs on the land. The keeping of livestock, such as pigs, on the land would clearly fall within the definition of agriculture set out above. Furthermore, in my view the fencing provides an agricultural function by securing the livestock and preventing them from escaping. I would therefore regard the fencing as an “agricultural building” in compliance with paragraph 154(a) of the Framework.
21. Overall, on this issue, I find that whilst the three containers represent inappropriate development in the Green Belt, the fencing complies with paragraph 154(a) and should not therefore be regarded as inappropriate development.

Openness

22. Given that I have found that the three containers amount to inappropriate development, it is necessary for me to assess their impact on openness.

Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence.

23. The three containers are single storey and cover an area of approximately 88m² on land which was previously an undeveloped part of an agricultural field, in a largely undeveloped area. Therefore, given the obvious increase in both footprint and volume, the containers have the unavoidable consequence of resulting in the reduction in the spatial openness of the Green Belt.
24. Despite the spatial reduction in the openness of the Green Belt, there is a more limited visual reduction in openness. The containers are not immediately visible from Upper Bourne End Lane, albeit given the topography of the site the development is likely to be visible in longer range views. By virtue of their size, views of the containers will be possible from adjacent agricultural fields and plots, although some of these views are likely to be partially obscured by vegetation or from long distance. Consequently, the containers only result in moderate harm being caused to the visual aspect of openness.
25. Notwithstanding this moderate visual impact, spatially the containers reduce the openness of the Green Belt through the introduction of new buildings in an area of land which was previously free from built form. Overall, the containers do not preserve the openness of the Green Belt and, given the fundamental aim of the Green Belt to keep land permanently open, this loss of openness weighs against the development. The containers also conflict with the Green Belt purpose of safeguarding the countryside from encroachment as set out at paragraph 143 (c) of the Framework.

Character and Appearance

26. As already set out above there is a previous appeal decision relating to the containers and fencing that is the subject of the notice. This is clearly a material consideration and regard should be had to it. Indeed, there must be very sound reasons for me to reach a different conclusion to the previous Inspector, not least because of the importance of consistency in planning decisions.
27. The Inspector dealing with the 2022 appeal concluded that the containers resulted in significant harm to the open character and appearance of the countryside. Paragraph 12 of the Inspector's decision sets out the following:

The buildings appear modular in design with their single storey rectangular shapes and flat roofs. The timber cladding and recent application of a green roof material do little to ameliorate their stark utilitarian and bulky impact, and resultant incongruity on this rural area. As such, the buildings harm the intrinsic character and beauty of the countryside.
28. Whilst consistency is an important part of decision making, any material changes in circumstances and/or other considerations may enable me to reach a different conclusion to the previous Inspector. However, in this case there is nothing that leads me to reach a different conclusion and, based on my own observations, I find no reason to disagree with the previous Inspector's findings in relation to the containers.

29. The previous Inspector's decision though is somewhat silent in terms of the effect of the post and wire fencing on the character and appearance of the area. The character of the surrounding area is predominantly agricultural and comprises largely open countryside with fields, paddocks and sporadic woodland.
30. I accept that boundary fencing to delineate field boundaries and other land is not uncommon within agricultural settings, and that the nature of the post and wire fencing affords an element of intervisibility. Nevertheless, the appeal site is relatively small and contains a large expanse of fencing both around its outer perimeter and internally to sub-divide the site. Consequently, the fencing appears as a harsh feature that fails to assimilate satisfactorily with its rural setting, eroding the visual qualities of the local landscape and causing harm to the character and appearance of the area.
31. In view of the above, I conclude that the development causes significant harm to the character and appearance of the area. The development is contrary to Policies CS1, CS5, CS12 and CS25 of the CS. Together these policies seek, amongst other things, to ensure that developments have no significant impact on the character and appearance of the countryside and help conserve and enhance the natural landscape.

Other Considerations

32. The appellant has not specifically put forward any "other considerations" as part of the appeal submissions. In any event, I accept that the containers and fencing assist towards the breeding of pigs on the land which generates business and income for the appellant. The pig breeding use will also require feed and other materials to be purchased. These matters provide a benefit to the local economy, albeit the scale of these benefits is extremely limited due to the small scale of the enterprise.

Planning Balance and Conclusion

33. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be supported except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
34. I have found the containers to be harmful to the Green Belt by reason of inappropriateness and loss of openness. This amounts to a matter of substantial weight, to which I must add the harm caused to the character and appearance of the area. The weight of any other considerations in favour of the development is extremely limited. Accordingly, these considerations do not outweigh the substantial weight that I have given to the harm caused to the Green Belt and the additional harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.
35. In terms of the post and rail fencing, whilst it does not represent inappropriate development in the Green Belt, I have found that it causes harm to the character and appearance of the area. As a result, it conflicts with the relevant development plan policies. Any benefits arising from the retention of the fencing would not outweigh or justify the harm I have identified.

36. For the reasons set out above, the development conflicts with the development plan when read as a whole, and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all matters raised, I therefore conclude that the appeal on ground (a) should be dismissed, and planning permission be refused on the deemed application.

Ground (f)

37. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) to remedy the breach of planning control that has occurred, or (b) remedying any injury to amenity which has been caused by the breach.
38. In short, the requirements of the notice are to remove the operational development and return the land to its original condition. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
39. The appellant's case is that, should the ground (a) appeal be dismissed in relation to the containers, it is not necessary for the fencing to be removed. This is because the appellant considers that the fencing does not constitute inappropriate development in the Green Belt and is essential for the keeping of pigs.
40. However, whilst the fencing is not inappropriate development, I have found that it causes harm to the character and appearance of the area and is in conflict with the development plan. Accordingly, the removal of the fencing is necessary to remedy the breach of planning control. The appellant has not suggested any other lesser steps. Since the requirements are not excessive in order to remedy the breach of planning control, the appeal on ground (f) fails.

Ground (g)

41. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant has suggested a period of 12 months to allow sufficient time to find, procure, and relocate the enterprise to an alternative site.
42. Whilst I appreciate the reasons stated for requesting an extension of time, little evidence has been provided to demonstrate that it would not be possible to carry out the works and relocate within the specified six-month period. In the absence of substantive explanation, I consider the period of six months to be proportionate to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

43. For the reasons given above I conclude that the appeal does not succeed. I have upheld the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Jones

INSPECTOR