
Appeal Decisions

Site visit made on 27 May 2025

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

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Appeal A: Ref APP/A1910/C/24/3348493

Land at Anthony Betts & Company Limited, Leighton Buzzard Road, Water End, Hemel Hempstead HP1 3BD shown edged red on the plan attached to the notice

- 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 Anthony Betts (Anthony Betts and Company Limited) against an enforcement notice issued by Dacorum Borough Council.
 - The enforcement notice, numbered E/18/00225, was issued on 2 July 2024.
 - The breach of planning control as alleged in the notice is without Planning Permission the Material change of the use of the land for the display and sale of motor vehicles, the erection of a fence adjacent to a highway in excess of 1 metre and the laying of hard standing which facilitates the unauthorised use.
 - The requirements (and compliance periods) of the notice are:
 1. Cease the use of the area marked A on the map for the display, sales and parking of vehicles (1 month).
 2. Remove the block paving from the A marked A on the map. For avoidance of doubt this is also shown as area A and area B within Appendix A (3 months).
 3. Remove the closed board fencing, concrete posts and gravel boards that form the boundary with Leighton Buzzard Road, Hemel Hempstead (3 months).
 4. Fill any holes arising from the removal of the fence (3 months).
 5. Remove all materials from site arising from step 2 and 3 above (6 months).
 6. Restore the land to its previous condition (9 months).
 - The appeal is proceeding on the grounds set out in section 174(2) (c) (g) of the Town and Country Planning Act 1990 (the Act) as amended.
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Appeal B: Ref APP/A1910/W/24/3349035

Land at Anthony Betts & Company Limited, Leighton Buzzard Road, Water End, Hemel Hempstead HP1 3BD

- 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 A Betts (Anthony Betts & Company Limited) against the decision of Dacorum Borough Council.
 - The application Ref 24/00801/RET, dated 3 April 2024, was refused by notice dated 11 June 2024.
 - The development proposed is retention of hardstanding for vehicle parking and sales.
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Decisions

1. It is directed that the enforcement notice be corrected and varied by:
 - Removing “(Material Change of Use and associated Operational Development)” from underneath “ENFORCEMENT NOTICE”;
 - Adding “dated 15/06/2024” to the end of the sentence in Section 2;

- Removing “the Material change of the use of the land for the display and sale of motor vehicles” and “which facilitates the unauthorised use” from Section 3;
 - Removing step 1 from Section 5;
 - Replacing step 2 in Section 5 in its entirety with “Remove the block paving from the areas marked A and B on the attached Drawing No J1085/002 Revision B”;
 - Adding “before the breach of planning control took place” to the end of step 6 in Section 5;
 - Removing “Step 1 within one (1) month from the date the notice takes effect” from Section 6; and
 - Replacing “three (3)” with “six (6)” in Section 6.
2. Subject to these corrections and variations, made partly to clarify the notice and partly due to limited success on ground (c) and full success on ground (g), Appeal A is otherwise dismissed and the enforcement notice is upheld.
3. Appeal B is dismissed.

Procedural Matters

4. There are defects within the enforcement notice which detract from its clarity. These were raised by the appellant (within his appeal submissions and by way of an email sent to the Council upon receipt of the notice) and the Council has provided responses (in its appeal submissions and by way of a response to the email). There is no need for me to repeat each matter here but, taking into account fully the content of the discourse between the main parties, I am using my powers of correction to improve the clarity of the notice without any prejudice caused to any party.
5. The defects are not so fundamental so as to cause the notice to be a nullity. The notice, before correction, is not so hopelessly ambiguous and uncertain as to what is alleged and the steps required. Significantly, despite potential confusion caused by 2 different plans with differing details, in the context of step 2 of the requirements the appellant would be reasonably certain that the area of hardstanding targeted by the notice would have been the same for which he had applied for retention under 24/00801/RET.
6. As statements were received on the appeals before the changes to the National Planning Policy Framework (the Framework) on 12 December 2024, I invited comments from the main parties as to the relevance of the latest version of the Framework to the appeals. Both parties responded with comments, and I have taken all into account.
7. I agree with the appellant that the erection of the fence can be considered as part of the development for which consent is sought under Appeal B. It is marked (at least partly) on submitted Drawing No J1085/002 Revision B and referred to in the Planning, Design and Access Statement for 24/00801/RET. The Council determined the application on that basis, and so shall I.

Appeal A ground (c)

8. For an appeal to succeed on this ground, I must be satisfied on the balance of probabilities that matters stated in the notice do not constitute a breach of planning control.

Change of use

9. While not explicitly referred to by the appellant as part of the ground (c) appeal made¹, a fundamental thrust of his argument is that the site is being used lawfully and that there has not been a material change of use constituting development requiring planning permission. Indeed, both main parties within the appeal papers have said that the established use of the site is for vehicle display (sometimes referred to as 'parking') and sales. While this use is notably now occurring upon the newer sections of hardstanding that have been laid, it seems to me that the planning unit is the entire appeal site within the same occupation and ownership of the appellant where he carries out his physically and functionally connected activities associated that use.
10. Consequently, I find that there has been no material change of use of the land comprising the planning unit (which appears to comprise the red-lined land targeted by the notice) and therefore no unauthorised development in this respect.

Fence

11. Article 3(1) and Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) affords general planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
12. Development is not permitted under Class A if the height of any such gate, fence, wall or means of enclosure erected or constructed would exceed 2m above ground level or 1m above ground level in the case of it being erected or constructed adjacent to a highway used by vehicular traffic.
13. It would seem agreed that the height of the close boarded fence subject of the notice is 2m above ground level and no more (that height is annotated on Drawing No J1085/002 Revision B, which the Council attached to the notice and I have seen nothing in the submissions to suggest it has been built any higher). The disputed issue, rather, is whether the fence has been erected adjacent to the vehicular highway which is Leighton Buzzard Road.
14. The fence runs broadly parallel to Leighton Buzzard Road for some distance, a few metres away from the highway and set back upon the appeal site behind a narrow strip of land within the appellant's ownership and upon which vegetation, bushes and trees are situated. Notwithstanding the partial vegetative screening and the slightly setback position of the enclosure², the fence - as a matter of fact and degree - is perceived to clearly define the boundary of the appeal site from the highway. Therefore, I find it has been erected 'adjacent' to it. Accordingly, being over 1m in height, it does not benefit from planning permission under the GPDO.

¹ Nevertheless, I must deal (where I can) with all grounds of appeal raised (explicit or implicit) and the Council has had full opportunity to address the issue having seen the argument clearly stated in the appellant's statement.

² Notwithstanding it is further back from the highway than the fence enclosing the adjacent land occupied by Water End Tyres.

Conclusion on ground (c)

15. On the balance of probabilities, I find that a breach of planning control has not occurred as regards the alleged material change of use and ground (c) succeeds as far as it relates to that matter only. I am making corrections to the notice accordingly, including within the allegation and the requirements.
16. I find to the same standard of proof that breaches of planning control have, however, occurred as regards both the erection of a fence and the laying of hard standing (the latter being not disputed by the appellant) and the corrected notice remains concerned with those matters.

Appeal A ground (g)

17. For success on this ground, I must be satisfied on the balance of probabilities that an unreasonably short period of time has been given in the notice for compliance with any or all of the steps cited as requirements.
18. Compliance with the notice and particularly the removal of the unlawful hardstanding (which facilitates the display of a sizable number of vehicles) will have significant effects upon the business³. I agree with the appellant that 6 months would be a reasonable period in which to carry out the physical works required by steps 2-5⁴, and for the necessary stock movements to take place to enable those works to take place. Such a period would also be reasonable in terms of the business adjusting to the resultant change in its operations, and I am varying the notice accordingly. Since the notice already provides for a compliance period of 9 months for step 6, I am leaving that period in place.
19. Accordingly, the appeal on ground (g) succeeds.

Appeal B

Main issues

20. The main issues in the appeal are:
 - whether or not the development is inappropriate development in the Green Belt;
 - the effect of the development on the character and appearance of the site and surrounding area; and
 - the effect of the development on trees.

Reasons

Green Belt

21. The appeal site falls within the Metropolitan Green Belt. As far as it is relevant, the Council has said that the land constitutes "Grey Belt" as defined in the Framework.
22. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

³ Appellant's Statement of Case (5.15-5.16) and Final Comments.

⁴ Step 1 having been removed under my corrections of the notice, due to associated success on ground (c).

23. The Framework says that development in the Green Belt is inappropriate, apart from certain specified exceptions. One of the exceptions⁵ is the partial or complete redevelopment of previously developed land, which would not cause substantial harm to the openness of the Green Belt.
24. The hardstanding of the appeal development was reportedly laid over an original area of hardstanding laid in around 2002 comprising of tarmac (which, according to the appellant's statement, had become lightly covered with weeds and growth). The pre-existing hardstanding had reportedly extended further into the south-eastern part of the appeal site than the appeal hardstanding, running parallel to the new fence which has been erected. This stated previous development was clearly marked on Drawing No J1085/002 Revision B submitted with 24/00801/RET (and reproduced within the Planning, Design and Access Statement for that application). Notably however, notwithstanding its inclusion in the application documents, the existence of the previous development was not substantively addressed or challenged in the Delegated Report – as indeed it has not been by the Council throughout the course of the appeal proceedings⁶. Indeed, it seems that the Council deemed the above annotated drawing credible enough to attach it to the notice in Appeal A in order to identify site details.
25. In this context, and notwithstanding that Great Gaddesden Parish Council cannot recall the tarmac, I find on the balance of probabilities that the appeal site was pre-developed as detailed by the appellant who made a declaration of truth in submitting the application. While the earlier tarmac may have blended into the landscape, its pre-existence convinces me that this part of the appeal site (by way of an intimate relationship) forms part of the curtilage of the fixed structures and fixed surface infrastructure at the north end of the site. Accordingly, I find the appeal site to be previously developed land.
26. The appeal development has an enclosing impact on the Green Belt, due to the additional areas of hardstanding (which also facilitate the display of a greater number of vehicles). Further, the fence partially encloses the site and reduces its visual openness, restricting views across the land from public vantage points along Leighton Buzzard Road. However, the impact of the hardstanding on the visual openness of the Green Belt is lessened to a significant degree by the restricted views caused by the fence and in general terms by the fact that the development is within the context of: (a) the extensive lawful hardstanding (also used for the display of vehicles) and showroom/workshop buildings to the north and north-west within the appeal site; and (b) the significant hard surfaces of the adjacent commercial land uses along Leighton Buzzard Road on the same side of the highway in each direction.
27. Overall, for these reasons, I find that the appeal development causes moderate harm to the Green Belt – but not substantial harm. Accordingly, constituting the partial redevelopment of previously developed land within the Green Belt, it is not inappropriate development for the purposes of the Framework. As such, the development is not in conflict with Policy CS5 of the Dacorum Borough Council Core Strategy 2006-2031 (CS) since that policy says that the Council will apply national Green Belt policy.

⁵ Paragraph 154. g).

⁶ The submitted unannotated photographs are somewhat ambiguous as to the nature of the ground before the works of the appeal development. They do not demonstrate with sufficient clarity, in my view, that the land was not pre-developed as detailed by the appellant.

Character and appearance

28. The visual impact of the development is very heavily influenced and ameliorated by the context of the existing use (and hardstandings) of the commercial site (and those of the neighbouring businesses), and by the screening effect of the new timber fence which itself blends aesthetically into the background of the vegetatively lined strip. The fence, being situated adjacent to the new areas of hardstanding, is particularly effective in screening them and I do not conclude that that development as a whole increases the visual prominence of the existing car sales premises to the detriment of the rural character of the surrounding area.
29. For these reasons, the development causes no harm to the character and appearance of the site and surrounding area. As such, it is not in conflict with Policies CS11 or CS12 of the CS which seek to ensure high design quality. For the same reasons, it is not in conflict with the Framework.

Trees

30. Policy 99 of the Dacorum Borough Local Plan (LP) says that, where new development is proposed, a high priority will be given to the retention of trees and to their protection during development. Further, in order to minimise unnecessary loss and damage to roots, accurate tree surveys should be required and the positions of existing trees in relation to proposed developments should be carefully considered.
31. No tree survey has been provided by the appellant.
32. The narrow strip of land between the new fence and Leighton Buzzard Road contains trees protected by a Tree Preservation Order (TPO 188) made in 1989. These trees - some of which appear to me quite large - comprise mainly Hawthorn, Field Maple, Ash and Sycamore. The fence has been erected quite close to them, as has the new hardstanding. Despite a modest gap between the hardstanding and the back of the fence, according to Drawing No J1085/002 Revision B, the new block paving has been laid somewhat closer to the protected trees than the earlier tarmac.
33. Without an accurate tree survey showing otherwise, it is not unreasonable to conclude that the hardstanding (and cars stationed upon it) and/or the fence may cause (though compaction of root protection areas or otherwise) unnecessary loss and damage to roots.
34. The appellant says that the trees are in good health but I place very limited weight on that opinion, it being appropriate and proportionate for expert opinion to be provided given the context of the works in close proximity of valued trees protected by a Tree Preservation Order. I am also mindful that a lay person's appreciation of tree health, including my own, may not be able to sufficiently assess the likely health of any particular tree over time due to the possible effects of development upon root protection areas.
35. For these reasons, I find that it has not been sufficiently demonstrated that no trees have been adversely affected by the development. As such, the appeal development conflicts with Policy 99 of the LP and Policy CS12 of the CS which together seek to preserve and retain trees.

Other Matters

36. While I appreciate an increased level of hardstanding is required to store and display a large number of vehicles under the terms of the dealership franchise agreement (as well as for general business competitiveness and viability), and that the failure to provide it may have significant negative implications for the business and its employees, the need⁷ does not outweigh the possible harm to protected trees which make a positive contribution to the surrounding area.
37. The identified harm is also not outweighed by any highway safety implications arising from the use of 'overspill' sites beyond the appeal site, or any security implications arising from not providing the fence of the appeal development.

Appeal B Conclusion

38. The appeal development does not comply with the development plan as a whole, and there are no other considerations which outweigh this finding. There are no conditions I can impose (including as regards additional landscaping suggested by the appellant) which would make the current appeal scheme acceptable as regards to the harm I have identified, and in the absence of sufficient arboricultural information. Accordingly, I shall not grant planning permission.

Overall Conclusion – Appeals A and B

39. For the reasons given above I conclude that Appeal A should succeed only to a limited extent on ground (c) and in full on ground (g). The appeal is otherwise dismissed and I shall uphold the enforcement notice with corrections and variations.
40. For the reasons given above I conclude that Appeal B should be dismissed.

Andrew Walker

INSPECTOR

⁷ In the planning balance, I place significant weight on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (Para 85 of the Framework)