The Planning Inspectorate

Appeal Decision

Site visit made on 14 September 2020

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

an Inspector appointed by the Secretary of State

Decision date: 15 October 2020

Appeal Ref: APP/B5480/C/19/3233685
The East Side of Tye Farm, St Mary's Lane, Upminster RM14 3NX (registered under title number EGL488518)

- 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 Paul Nichols (Aquarend Group) against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/846/18, was issued on 26 June 2019.
- The breach of planning control as alleged in the notice is:
  1. Without planning permission, the unauthorised change of use of green belt land to commercial storage and distribution use (B8) and intrinsically linked use of hard surfaced areas.
  2. Without planning permission, the unauthorised development associated with the change of use for storage and distribution; including the placement of storage containers, skips, caravans, commercial vehicles/equipment, building materials and commercial waste.
- The requirements of the notice are to:
  (i) Cease using the land for any commercial use including storage and distribution;
  (ii) Remove in full from the land outlined in black on the plan attached to the notice, all vehicles, machinery, storage containers and equipment associated with any commercial use;
  (iii) Remove from the land, in the area shown in hatched in black on the plan attached to the notice, all hardstanding used in association with commercial use;
  (iv) Restore the land as edged in black to its condition before the breach occurred;
  (v) Remove from the land, in the area shown outlined in black on the plan attached to the notice, all materials, rubble, machinery, apparatus and installations used in connection with or resulting from compliance with steps (i), (ii), (iii) and (iv) above.
- The period for compliance with requirements (i) and (ii) is 3 months. The period of compliance with requirements (iii), (iv) and (v) is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Decision

1. It is directed that the enforcement notice be corrected by replacing the plan attached to the notice with the one attached to this Decision, due to the appeal succeeding to a limited extent under ground (d).

2. It is directed that the enforcement notice be varied by replacing "3 months" with "6 months" in section 5, due to the appeal succeeding under ground (g).

3. It is directed that the enforcement notice be varied by replacing "6 months" with "8 months" in section 5, due to the appeal succeeding under ground (g).

4. Subject to this correction and variations the appeal is otherwise dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

Grounds (b) and (d)

5. It is clear from the photographic evidence submitted by both parties, and supported by the statutory declarations, that by the end of 2006 (and apparently in continuous use since) the appellant's commercial storage and distribution use (B8) included 2 areas which the Council has included within the area edged in black on the enforcement plan. These are the narrow strip of land running immediately alongside the access road, and the roughly triangular shaped parcel of hardstanding immediately to the north-east of the yard.

6. Even were the notice correct that a change of use had occurred in respect of these 2 areas (disputed by the appellant under ground (b) although I note that it is not argued explicitly that no change of use has historically taken place in respect of the triangular parcel of land), I am satisfied that any such development had taken place in excess of 10 years before the notice was issued and was continuous throughout that period. Therefore, it was too late to take enforcement action in respect of them. An appeal under ground (d) therefore succeeds in this respect and I am accordingly using my powers, satisfied that it would cause no injustice to the parties, in correcting the plan attached to the notice so that these 2 areas are outside the land edged in black subject to the allegation.

7. The photographic evidence also clearly shows (Google Earth aerial image dated 4 June 2015) that an area of hardstanding (hatched in green by the appellant on his *Current Site Plan 2020* in appendix AQ8 of his statement) had been laid to completion and was in apparently in use by his B8 undertaking on that date (while noting that a Google Earth aerial image dated 27 June 2010 shows no such development to have taken place). While I find accordingly that it would be too late for the Council to take enforcement action in respect of the operational development represented by the hardstanding in isolation (as it was substantially completed more than 4 years before the issue of the notice), the notice is directed at the alleged breach of planning control constituted by the unauthorised change of use of the land linked to the hardstanding. Therefore, an appeal under ground (d) does not succeed other than to a limited extent as set out in the paragraph above since the appellant has not persuaded me on the balance of probabilities that change of use in respect of all other parts of the land continuously occurred for 10 years or more before the issue of the notice.

Ground (a) and the deemed planning application

Main issues

8. The main issues in the ground (a) appeal are:

   - whether the development is inappropriate development in the Green Belt;
   - the effect of the development on the openness of the Green Belt.

- the effect of the development on the character and appearance of the area.
- would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the development?

Reasons

Inappropriate development, effect on the Green Belt, character and appearance

9. Chapter 13 of the National Planning Policy Framework (the Framework) stresses that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

10. Paragraph 146 of the Framework says that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include engineering operations (such as hardstanding) and material changes in the use of land such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds. These types of changes of use are similarly considered as not inappropriate under Policy DC45 of the Council's Core Strategy and Development Control Policies Development Plan Document 2008 (DPD) which, while dating from some years before the current Framework, is broadly consistent with it since the general aims of the policy is to promote uses that have a positive role in fulfilling Green Belt objectives. I therefore give it weight.

11. I agree with the Inspector in the dismissed 2012 appeal[1] that the appeal site is located in an area of sporadic residential and commercial development interspersed with open land, and that although buildings are visible in the landscape (including structures associated the adjacent site for travelling show people) there is a general sense of openness, albeit with the activity of the M25 motorway visible in the distance. It seems to me therefore that it is of great importance in meeting the fundamental aim and purposes of Green Belt policy to keep the interspersed areas of open land permanently open and to protect them and the countryside they constitute from encroachment and urban sprawl.

12. Notwithstanding that there is screening around the site and that it is set back from the road, the appeal development through its extensive areas of hardstanding, storage containers, skips, caravans, commercial vehicles, equipment, building materials and commercial waste significantly reduces the spatial openness of the land. The movement of large commercial vehicles upon the site, though transient, further diminishes the sense of openness of the land and reinforces the encroachment upon the countryside. These factors, and for the same reasons given, also cause significant harm to the character and appearance of the countryside which is not contingent on public views. This is in conflict with paragraph 170 of the Framework as the development fails to recognise, or preserve, the intrinsic beauty of the countryside.

[1] APP/B5480/A/12/2171821, decision date 23 July 2012, erection of one industrial unit and demolition of existing timber storage shed.

13. In coming to these judgements, I have taken into account my finding under ground (d) that a significant portion of the hardstanding laid within the site is lawful as operational development. However that fact does not dissuade me from the conclusion, for the reasons above, that it is the change of use and the intrinsically linked hardstanding (which in any respect in totality encroaches deeper into the site than the aforementioned section) do not preserve the openness of the Green Belt and conflict with the purposes of including land within it. They are therefore inappropriate development.

Other considerations

14. The appellant says that the appeal development has resulted from the growth of the business which, to maintain viability and its employment of 47 people, requires the space on the site and its hardstanding for the assembly of plant and materials as a staging post for moving onto more-constrained worksites and for the turning of HGVs. Chapter 6 of the Framework says that planning decisions should support a prosperous rural economy and the sustainable growth and expansion of all types of business in rural areas. I therefore give this consideration significant weight.

15. The turning of HGVs on the site enabled through the space and hardstanding of the appeal development enables them to exit onto the highway in forward gear, for the benefit of highway safety. I give this consideration significant weight.

Green Belt planning balance

16. Paragraph 144 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found that significant harm would be caused to the character and appearance of the area. In totality, the harm is of a magnitude which weighs very heavily against the appeal development.

17. Having considered all matters raised in support of the appeal development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the development is contrary to the guidance in the Framework, Policies DC45 and CP14 of the DPD and Policy 7.16 of the London Plan which together seek to protect the Green Belt and its character and appearance. Accordingly, the appeal under ground (a) does not succeed.

Ground (f)

18. It is clear from the way the requirements of the notice have been drafted that the Council is pursuing the purpose of remedying the breach of planning control rather than remedying injury to amenity.

19. Notwithstanding this purpose, the appellant has put forward lesser steps to those required in the notice in the form of 2 alternative schemes for consideration in conjunction with the appeal under ground (a): (1) that the land associated with the hardstanding found under ground (d) to be lawful as operational development should be permitted to change use by allowing it to be used solely for the purposes of vehicle parking and for the turning of HGVs; (2) that the land associated with the hardstanding found under ground (d) to be lawful as operational development should be permitted to change use by

allowing it to be used solely for the purposes of the turning of larger vehicles visiting the site, with the boundary fence around the northern and eastern perimeter of the yard returned to its original position.

20. It is suggested that either of the schemes could be secured by condition in granting planning permission. Further, the appellant has highlighted in drawings showing the proposed schemes that a new landscaped bund of 1 metre in height would be introduced to the perimeter of the retained hardstanding using permitted development rights. Under both schemes, the hardstanding which appears to have laid in 2016 (hatched in grey by the appellant on his *Current Site Plan 2020* in appendix AQ8 of his statement) would be removed and the land re-instated.

21. However, these alternatives to what is required in the notice would not remedy the breach of planning control. Further, even had I found that the purpose of the notice was to remedy injury to amenity caused by the breach, the alternative schemes would not achieve this. Taking into account all elements of the alternative proposals, the change of use would be inappropriate development in the Green Belt and would by definition cause it harm. Both alternatives conflict with the purpose of including the land within the Green Belt, through the encroachment of the countryside by the presence and manoeuvring of large commercial vehicles on the site as an integral part of the site's use notwithstanding the transiency of individual vehicles. The Framework requires that substantial weight should be given to any harm to the Green Belt, and accordingly the weight assigned to the harm caused by each of the alternative schemes is substantial and does not materially affect the outcome of the planning balance undertaken.

22. The appellant has also suggested that I vary the steps of the notice to enable him to retain the hardstanding that I consider to be lawful as operational development under ground (d). However, Section 173(5)(a) of the Act provides that a notice may require the alteration or removal of any buildings or works in achieving its purpose, which in this case I consider to be the remedying of the breach by restoring the land to its condition before the change of use took place. I find based on all the evidence that the hardstanding works were integral and solely for the purpose of facilitating the unauthorised use. Therefore, and despite being immune from enforcement as operational development, the notice is correct in requiring the hardstanding to be removed so that the land is restored to its condition before the change of use took place.

23. Therefore, while declining to use my powers under ground (a) to grant planning permission for the development in whole or in part, I will also not vary the notice under ground (f) as no lesser steps are possible to remedy the breach of planning control than as required in the notice. Therefore, the appeal under ground (f) fails.

Ground (g)

24. For an appeal to be successful under this ground, I must be satisfied that the time given to comply with the notice falls short of what reasonably should be allowed.

25. The notice, in essence, allows 3 months to cease the unauthorised use and move items off the land and a further 3 months (6 months in total) for the removal of the hard surfacing and reinstatement of the land.

26. While there is ongoing harm being caused to the Green Belt and to the character and appearance of the area, I must weigh that against what the appellant has said, and as a ground (a) appellant he had reasonable cause to wait for the outcome of the deemed planning application before making any plans or taking any steps as contingency in the event of its refusal. I place significant weight on his comments under ground (g) and in particular that this Decision will likely mean that he will have to relocate his business. Further, I accept his argument that the time periods allowed by the notice would be too short in locating a suitable alternative site and securing the necessary consents, and that an unreasonably short compliance timescale would have a significant negative impact on business continuity and employment. Also being mindful of the Framework's support for businesses and the economy, I agree with the appellant that it is reasonable for the notice to be varied to allow 6 months for the unauthorised use to cease and for removal of associated items to occur and to allow 8 months for the hardstanding to be removed and the land re-instated. Accordingly, I am using my powers to vary the notice to these effects and the appeal under ground (g) succeeds.

Conclusion

27. For the reasons given above I conclude that the appeal should not succeed except in respect of ground (g) and to the limited extent on ground (d). I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 15 October 2020

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

Land at: The East Side of Tye Farm, St Mary's Lane, Upminster RM14 3NX (registered under title number EGL488518)

Reference: APP/B5480/C/19/3233685

Scale: Do not scale