



Appeal Decision

Site visit made on 1 March 2023

by **Zoë Franks Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 05 April 2023

Appeal Ref: APP/W1905/C/21/3275809

Land Lying north east side of Church Lane, Wormley, Broxbourne, EN10 7QF, 535361, 206126

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Croke against an enforcement notice issued by Broxbourne Borough Council.
 - The notice, numbered ENF/21/0001, was issued on 4 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised hard surfacing of land.
 - The requirements of the notice are: (i) To remove all deposited hard core materials laid to create the hard surfacing and return the site to its former condition. (ii) Permanently remove from the land all rubble, rubbish or debris arising from compliance with point (i) above. (iii) Restore the site to the condition that existed before the breach of planning control described above took place. (iv) Grade the land with topsoil and sow the bare earth with grass seed.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
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Decision

1. 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.

Grounds (b) and (c)

2. An appeal on ground (b) is on the basis that the matters stated in the notice have not occurred, and on ground (c) that those matters (if they occurred) do not constitute a breach of planning control. They overlap in this case as the appellant says that the allegation in the notice suggests that material was brought onto the land and laid as hard surfacing, but that the material was instead already on the land and that it was sorted, crushed and sprinkled on top of the pre-existing material. They argue that as no new material was brought onto the land the works do not constitute a breach of planning control.
3. The definition of development in Section 55 of the 1990 Act includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Works to change the levels of the land, including the redistribution of materials from elsewhere on the appeal site fall within the definition of development, either as engineering or other operations, depending on the scale and nature of the works. In this case it is clear from the aerial photographs submitted that there was a significant change in the appearance of and

materials on the surface of the land at some point between 2018 and 2020, and this accords with the information provided by the Council and interested parties. Whilst some of the change has come about due to the removal of trees and vegetation it is also clearly evident that a material of a uniform pale colour has been spread over the site, and the appellant accepts that it was also regraded/levelled during that time to facilitate this work. The allegation in the notice does not in fact refer to any additional material being brought onto the land.

4. It is therefore clear from the appellant's own evidence that the matters stated in the notice, the 'hard surfacing of the land' did occur. These works are development and the appeals on grounds (b) and (c) therefore fail.

Ground (a) and the deemed application for permission

5. The main issues are:
 - a) The effect of the development on the character and appearance of the area;
 - b) The effect of the development on the landscape and biodiversity;
 - c) The effect of the development on the water environment and quality;
 - d) Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework ('the Framework') and any relevant development plan policies;
 - e) The effect of the proposals on the openness of the Green Belt; and
 - f) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.
6. The site adjoins the north-east side of Church Lane, and is accessed by large double gates in a high palisade fence (and in fact the entire site boundary is fenced). The site is outside of the small settlement of Wormley within the Green Belt with some houses close by, but surrounded to the north, east and south by fairly open and green land.
7. The development alleged is the unauthorised hard surfacing of land, and it is clear from the aerial and other photographs submitted, and my observations during the site visit, that the surface of the land looks very different following the development, introducing an urbanising feature into a previously semi-wild environment. This causes material harm to the character and appearance of the area.
8. It is accepted that there had previously been a lawful use as a gravel pit and a narrow hard surfaced track went from the road into the site, but this track was of a much smaller scale, with little visible from outside of the site. The photographs provided by the appellant show that the site was overgrown with hardcore beneath the surface of the land which was extremely uneven, and with mounds of material and rubbish dumped. However, this does not alter the fact that the levelling of the land, with associated removal of the vegetation and trees in order to facilitate the laying of the extensive hard surfacing causes harm which is in conflict with Policy DSC1 of the Broxbourne Local Plan 2020 ('the BLP') regarding general design principles including the enhancement of local character, and to which I attach considerable weight.

9. Policy NEB1 of the BLP seeks to secure net gains to biodiversity in development wherever possible, Policy NEB4 provides that development must submit details on how existing landscaping will be protected and enhanced, and Policies W1, W2 and W4 seek to secure adequate water management measures. The appellant has not submitted details regarding any of these issues, and whilst it may be possible for the development to meet these requirements there is simply nothing before me to show this, and I am not satisfied that these issues could be adequately secured by the imposition of conditions without further information. The development is in conflict with these policies and I accord significant weight in each case.
10. The development does not fall within any of the exceptions set out in the Framework and is therefore inappropriate in the Green Belt. Engineering operations are not always inappropriate in the Green Belt but this is only the case where they preserve its openness and do not conflict with purposes of including land within it. In this case the development conflicts with the Green Belt purpose of assisting in safeguarding the countryside from encroachment. The development causes harm to the openness of the Green Belt in both visual and spatial terms, introducing a built structure that is clearly experienced in the vicinity. The harm to the openness means that development is also inappropriate when considering whether it is redevelopment of previously development land.
11. The development is therefore inappropriate and harmful to the Green Belt, and I attach substantial weight to this harm as required by the Framework. It is therefore necessary to consider whether there are any considerations which clearly outweigh this and any other harm arising from the development. The gates and fencing, and the clear up of the site including removal of fly-tipped waste may have increased the site security and safety of the site in terms of dangerous rubbish and trespassers. However, these elements of operational development do not form part of the allegation on the notice, and whilst the appellant argues that the land has a lawful planning use for the purposes of building storage there is insufficient evidence before me to support this claim. Put bluntly, it is for the owner to decide how best to maintain their land being mindful of civil legal duties and regulatory requirements. I therefore attach limited weight to each of these considerations.
12. I find that other considerations in this case do not clearly outweigh the harm I have identified, as set out above. Consequently, the very special circumstances necessary to justify the development do not exist.

Ground (f)

13. This ground of appeal is on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice. The appellant argues that as the crushed material was already stored on the site that it should not have to be removed.
14. The purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place (as set out in section 173(4)(a) of the 1990 Act.) The allegation is the unauthorised hard surfacing of the land and it is clear from the aerial photographs that these works have taken place at some date later than 2018. The requirements only

relate to the matters stated in the notice, and do not therefore cover any of the previous historic operations on the site.

15. The appellant is in the best position to know the full extent of these works and therefore to know what needs to be done to restore the land. The seeding with grass seed will help to remedy the breach as it will quickly 'green' the land once the hard surfacing is removed and encourage the return to its former condition. The steps required by the notice do not therefore exceed what is necessary to remedy the breach of planning control and the appeal on ground (f) fails.

Ground (g)

16. The appellant sought more time for compliance on the basis that 6 months would be insufficient if significant amounts of material (including the historic hardcore material) had to be removed. As this is not what is required by the notice the appellant's argument fall away and the appeal on ground (g) does not succeed.

Zoë Frank

INSPECTOR