The Planning Inspectorate

Appeal Decisions

Hearing held on 29 September 2015

Site visit made on 29 September 2015

by J A Murray LLB (Hons), Dip.Plan.Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 October 2015

Appeal A: APP/K2420/C/15/3005893
The land adjacent to the west of E Taylor Skip Hire & Recycling Limited, Leicester Road, Hinckley, Leicestershire, LE10 3DR

- 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 E Taylor Skip Hire & Recycling Limited against an enforcement notice issued by Hinckley & Bosworth Borough Council.
- The Council's reference is 12/00121/S.
- The notice was issued on 4 February 2015.
- The breach of planning control as alleged in the notice is without planning permission the change of use of land within the area hatched in blue on the Plan from agricultural use to the storage of non-agricultural waste and equipment and including:
  (a) waste materials comprising stone, road planings, road chippings, rubble, crushed bricks and concrete
  (b) skips
  (c) lorry trailers vehicle bodies containers vehicles and vehicle parts
  (d) other waste products
- The requirements of the notice are:
  (a) Cease the use of the Land for the storage of non-agricultural waste and equipment
  (b) Remove all non-agricultural waste and equipment from the Land
  (c) Break up the hard standing in the area hatched blue on the Plan and remove from the Land all arisings and associated materials from such breaking up
  (d) Lay the area hatched in blue on the Plan with top soil and reseed with grass
- The periods for compliance with the requirements are: 3 months for requirement (a); 4 months for requirement (b); 6 months for requirement (c); and 7 months for requirement (d).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Appeal B: APP/K2420/C/15/3005897
The land adjacent to the west of E Taylor Skip Hire & Recycling Limited, Leicester Road, Hinckley, Leicestershire, LE10 3DR

- 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 E Taylor Skip Hire & Recycling Limited against an enforcement notice issued by Hinckley & Bosworth Borough Council.
- The Council's reference is 12/00121/S.
- The notice was issued on 4 February 2015.

- The breach of planning control as alleged in the notice is without planning permission the creation of hard standing on the area of land hatched green on the Plan and the use of the same for unauthorised parking of non-agricultural vehicles.
- The requirements of the notice are:
  (a) Cease the use of the Land for the parking of non-agricultural vehicles
  (b) Break up the unauthorised hard standing hatched green on the Plan and remove all arisings and associated materials from such breaking up from the Land
  (c) Lay the area hatched in green on the Plan with top soil and re-seed with grass
- The periods for compliance with the requirements are: 3 months for requirement (a); 4 months for requirement (b); and 5 months for requirement (c).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a corrections and variations.

Preliminary matters

1. The allegation in the notice which is the subject of appeal B (Notice B) refers to operational development, namely the creation of the hard standing on the area hatched green on the notice plan, but also the use of that land for the parking of non-agricultural vehicles. However, it does not, in terms, allege a material change of use.

2. Whilst the Council indicated during the hearing that it was concerned with the use of the land for parking, it accepted that the area hatched green did not constitute a separate planning unit. For the purposes of assessing the materiality of any change of use, the larger field would fall to be considered as the planning unit. Whilst requirement (a) of the notice demands cessation of the parking use on an even large area edged red, on the notice plan, this goes well beyond the specific allegation of use of the area hatched green. Furthermore, that wider area edged red encompasses the adjacent field to the west, as well as the area know as 'Dunton Cottage', which is the subject of the allegation in the notice considered on appeal A (Notice A).

3. If Notice B were corrected or varied, so that it alleged a material change of use, the correct planning unit would need to be defined. However, the appellant pointed out that it would then be necessary to identify all of the elements in the use of that larger area, which would include storage uses as well as parking. This would widen the scope of the deemed application and necessitate additional notice requirements. I am not persuaded that this could be done without injustice and it would require consideration of matters not drawn to the attention of third parties, none of whom attended the hearing.

4. Having regard to these points, the Council accepted that it would be better to consider addressing the question of unauthorised uses through another enforcement notice, whereas this Notice B should be considered to relate to operational development only. In practice, removal of the hard standing would be likely to inhibit parking in the area hatched green anyway.

5. In the circumstances, I will correct the allegation by deleting the reference to use of the area hatched green for unauthorised parking. As stated above, that reference to "use" did not in itself indicate the material change of use of any

relevant planning unit anyway and this correction can be made without causing injustice. As a consequence, I shall also vary Notice B by deleting requirement (a) and restating the times for compliance in section 6. In any event, that requirement went beyond the scope of the allegation, which only concerned the area hatched green and its deletion will cause no injustice.

APPEAL A

Ground (b)

6. To succeed on this ground, the appellant must prove on the balance of probability that the matters alleged in the notice have not occurred, because no waste materials are stored on the site. If that is proved, I must consider whether the allegation can be corrected without causing injustice.

7. In addition to non-agricultural equipment, the allegation in Notice A correctly lists materials such as stone, road planings, road chippings, rubble, crushed bricks and concrete. However, the appellant explained that both the Environment Agency and Leicestershire County Council are satisfied that none of the materials stored on the site technically constitutes "waste". Along with metals, these other items are all reclaimed materials and the items listed can collectively be described as "aggregates". The Council accepted this point, but both parties agreed that the allegation can be corrected to reflect it without causing injustice. I am satisfied that this is the case and I will also make consequential variations to the notice requirements.

Ground (d)

8. Having regard to the corrected allegation, to succeed on this ground, the appellant must prove on the balance of probability that the change of use of the land from agriculture to use for the storage of aggregates and other recovered materials, including metals, and the storage of non-agricultural equipment, including skips, lorry trailers, vehicle bodies, containers, vehicles and vehicle parts occurred on or before 4 February 2005[1] and that the use then continued without significant interruption for 10 years after the date of change.

9. The parties agreed that the area hatched blue on the plan attached to Notice A constitutes a separate planning unit. I see no reason to take a different view; it is physically separated from adjoining land by fences and hedges and by an earth bund on its northern side and is functionally separate.

10. Although the area hatched blue on the plan has historically been known as 'Dunton Cottage', there is no evidence before me that there has ever been a dwelling on it. Certainly, it is highly unlikely that the somewhat dilapidated building which remains on the site could ever have been a dwelling. Though it had no direct knowledge of the site until more recently, the Council suggested that aerial photographs from 1999 and 2001 are consistent with agricultural use at that time. However, for the appellant, Mr Ambrose said that he had been visiting the site since 1993, when he first starting acted for the appellant, and that since that time, the land has been used informally for the purposes set out in the corrected allegation. With regard to the 1999 and 2001 aerial photographs, he explained that the items visible on the site were not agricultural equipment, but included: a 360 degree excavator; curtain sided containers, used to store the more precious materials; and skips.

[1] I.e. 10 years before the notice was issued.

Mr Ambrose's first hand account is consistent with the photographs and I am satisfied with it.

11. On the evidence, I accept that the change of use first occurred by 1993 at the latest. The Council suggested that it had intensified since then and that the area actually covered by the use had expanded, albeit within the blue hatched area. However, the notice does not allege a material change of use through intensification and the evidence is insufficient to show that there has been a fundamental change to the character of the use since 1993. Similarly, the evidence is insufficient to indicate that there was a change in the planning unit, so as to begin a new chapter in the planning history.

12. However, it is common ground that the land hatched blue was used as a gypsy/traveller site in 2006 and 2007 for some 3 – 4 caravans. Mr Ambrose acknowledged that it had been used as such for about a year, but said the use alleged in the notice also continued throughout the period of gypsy/traveller occupation. I have no reason to doubt that, but it nevertheless means that, in 2006, the use of the site materially changed from the storage use alleged in the notice to a mixed use for storage and as a gypsy/traveller site. Even though there is evidence that the storage use had subsisted for more than 10 years prior to 2006, it was then superseded by a new mixed use which, having continued for a year or so, constituted a substantial interruption. The clock started to run again once the gypsy/traveller site use ended in 2007, but the storage use did not then continue for 10 years before Notice A was issued.

13. The appellant also contended that the hard standing was substantially completed before 4 February 2011 and is thus immune from enforcement action. However, the notice does not allege operational development; merely a material change of use. Whilst it requires the hard standing to be broken up and removed, having regard to the relevant case law[2], the appellant acknowledged at the hearing that notices concerning changes of use can require the removal of operational development, even if it would otherwise be immune from enforcement action, providing it was integral to and part and parcel of the unauthorised use and was not undertaken for a different lawful use. The appellant did not dispute that the hard standing was integral to and part and parcel of the unauthorised use and could not suggest that it was provided for some other lawful purpose.

14. I therefore conclude on ground (d) that whilst the appellant has proved on the balance of probability that the alleged change of use occurred before 4 February 2005, he has not proved that it continued without significant interruption for 10 years after the date of change. Ground (d) therefore fails.

Ground (a)/the deemed application for planning permission

Main issue

15. The main issue is the effect of the development on the character and appearance of the area, having regard to policies concerning the Green Wedge.

[2] Murfitt v SSE [1980] JPL 598; Somak Travel v SSE [1987] JPL 630; Bowring v SSCLG & Waltham Forest BC [2013] EWHC 1115 (Admin); and Makanjuola v SSCLG[2014] JPL 439 (see Sweet and Maxwell's Encyclopedia of Planning law and Practice at paragraph P173.07)

Reasons

16. The appeal site lies in a countryside location with fields to the north, Burbage Common to the south and Hinckley Golf Course to the west. A field also separates it from the appellant's authorised waste transfer station to the east. This open setting is part of the Green Wedge, as designated by the Hinckley and Bosworth Borough Council Core Strategy (CS), adopted December 2009. The supporting text to CS Policy 6 indicates that the Green Wedge between Hinckley, Barwell and Earl Shilton safeguards the separation of the three settlements "helping to protect their individual identities" and provide "easy access from urban areas into green spaces" and that "maintaining the Green Wedge is an important part of protecting the green infrastructure of the borough." Policy 6 itself seeks to restrict new development in the Green Wedge to specified categories, which do not damage its function and retain the visual appearance of the area.

17. The appeal development does not fall into any of the acceptable categories of development listed in CS Policy 6. Furthermore, the appellant does not identify any overriding need for the development, so as to satisfy Policy WCS13 of the Leicestershire and Leicester Waste Development Framework Core Strategy and Development Control Policies (WDFCS) up to 2021, which seeks to restrict waste management development in Green Wedges.

18. The appeal site is screened from Burbage Common and the golf course by a substantial deciduous hedge, which was still in full leaf at the time of my visit. I could only glimpse the lorry trailers on the appeal site through that hedge, but it is possible that there would be more significant views during the winter months and it is clear that both the common and golf course are well used.

19. In any event, those lorry trailers are visible from the field access onto Leicester Road to the north, notwithstanding the overgrown earth bund on the northern boundary of the land hatched blue. Given the low level of materials currently stored on the site, they are screened by the lorry trailers, but the trailers themselves are intrusive in this country side setting. I do not know the height to which materials have been stored in the past. The appellant had suggested in its statement that a condition might be imposed to restrict this to 3m. However, Mr Ambrose indicated during the hearing that this would not be appropriate, as it would necessitate spreading the materials over a wider area. Whilst additional screening could be required, in order to be effective all rear round, new planting would have to be evergreen and would itself be incongruous in the context of surrounding native planting.

20. In terms of the main issue, I am satisfied that use of the site for the storage of these materials and equipment is detrimental to the undeveloped and open character of the area and it undermines the function of the Green Wedge. The development is therefore contrary to CS Policy 6 and WDFCS Policy WCS13 and having regard to my conclusion on the main issue and all other matters raised, I am satisfied that the appeal on ground (a) should not succeed and planning permission should not be granted.

Ground (f)

21. To succeed on ground (f) the appellant must show that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, the injury to amenity.

22. It is clear from its requirements that the primary purpose of the notice is to remedy the breach of planning control. The cessation of the use and removal of materials and equipment are necessary to remedy the breach and together with the removal of the hard standing and re-seeing with grass, they are also necessary to restore the land to its condition prior to the breach. In terms of amenity, the lesser step initially advocated by the appellant was restricting the height of stored materials to 3m but, as already indicated, this would not be practical. In these circumstances, the appeal must also fail on ground (f).

APPEAL B

Ground (b)

23. To succeed on this ground, the appellant must proved on the balance of probability that the matters alleged in the notice, as corrected, have not occurred.

24. The corrected allegation concerns only the creation of the hard standing. The essence of the appellant's case is that this constituted the improvement of an existing track. However, its evidence is that the track, which ran west from the waste transfer station, alongside the hedge on the northern site boundary, was a single vehicle track, some 3.5m wide. During the accompanied site visit, the width of the concrete hard standing was measured at 10.8m and, by pacing it, Mr Ambrose indicated that its approximate length was 35m.

25. In the circumstances, it is clear that an area of hard standing has been created and this was not merely the improvement of a track. The appeal on ground (b) cannot therefore succeed.

Ground (d)

26. Ground (c) is normally considered before ground (d). However, in this case the appellant's case on ground (d) is no more than the foundation for its case on ground (c). The case on ground (c) is that the works undertaken constitute improvement of the existing track, or private way. This is therefore dependant upon the track being lawful and so it makes sense to consider ground (d) first.

27. Under ground (d), the appellant must prove that the part of the track subsequently improved was substantially completed on or before 4 February 2011.[3] In fact, it is evident from aerial photographs and common ground between the parties that a gravel or hardcore track, some 3.5m wide, was completed adjacent to the northern site boundary well before that date.

28. To that extent then, the argument succeeds on ground (d), but the notice concerns the creation of the hard surface, rather than the initial creation of the track and so this success on ground (d) does not necessitate quashing or altering the notice. I must go on to consider ground (c).

Ground (c)

29. Under this ground, the appellant must prove on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.

30. The appellant's case is that the works, which were undertaken in 2012, were for the improvement of a private way and were therefore permitted

[3] I.e. 4 years before the notice was issued.

development by virtue of Class A of Part 9, of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995[4]. However, this argument can only apply to that part of the hard surfaced area which falls within the boundaries of the pre-existing, 3.5m wide track. The extract from Sweet & Maxwell's Encyclopedia of Planning Law and Practice, to which the appellant drew my attention[5], states that "works permitted by this Part could only affect the surface and foundations of the way: they could not widen it or alter its route."

31. Accordingly, in so far as part of the hard surface constitute improvement of the existing 3.5m wide lawful private way, it does not constitute a breach of planning control and the appeal succeeds in part on ground (c). This partial success on ground (c) necessitates a variation of the requirements of the notice, so that it will only demand removal of the hard standing beyond the boundaries of the pre-existing track. I am satisfied that such a variation will not cause any injustice.

Ground (a)/the deemed application for planning permission

Main issue

32. The main issue is the effect of the development on the character and appearance of the area, having regard to policies concerning the Green Wedge.

Reasons

33. As per appeal A, the appeal site lies in a countryside location within the Green Wedge, where CS Policy 6 applies. Whilst the mere existence of an area of hard standing some 10.8m x 35m reduces the openness of the Green Wedge, it is unlikely that there will be any significant views of the surface itself from public vantage points on Leicester Road, which only has a footway on its northern side. However, the existence of the hard standing facilitates the parking of vehicles and storage of vehicles and equipment in that area. The deciduous hedge on the northern site boundary is somewhat thin and I am satisfied that vehicles and equipment parked or stored on the hard standing would be seen from Leicester Road during the winter months. As a result the development has a detrimental impact on the open character and appearance of the area and the function of the Green Wedge, contrary to CS Policy 6. Any enhanced screening sufficient to overcome that impact would have to be undertaken on land outside the appellant's control and therefore a condition could not be imposed.

34. Having regard to my conclusion on the main issue and all other matters raised, I am satisfied that the appeal on ground (a) should not succeed and planning permission should not be granted.

Ground (f)

35. The appellant's case on ground (f) was that the notice should not require removal of the hard standing, save in so far as it lies beyond the boundaries of the original track. I have already considered this under ground (c) and concluded that the requirements should be varied accordingly.

[4] This is the Order in force at the time the works were undertaken but, in any event the relevant provision has been re-enacted in Class E of Part 9, of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.
[5] Hearing document 2.

Decisions

Appeal A: APP/K2420/C/15/3005893

36. The enforcement notice is:

    (i) corrected by deleting the allegation in section 3 and substituting "Without planning permission the material change of use of the land within the area hatched in blue on the Plan from agricultural use to the storage of aggregates and other recovered materials, including metals, and the storage of non-agricultural equipment, including skips, lorry trailers, vehicle bodies, containers, vehicles and vehicle parts"; and

    (ii) varied in section 5 by deleting the words "non-agricultural waste and equipment" from requirements (a) and (b) and substituting "aggregates and other recovered materials, including metals, and all non-agricultural equipment, including skips, lorry trailers, vehicle bodies, containers, vehicles and vehicle parts".

37. Subject to this correction and these variations the appeal is 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 1990 Act as amended.

Appeal B: APP/K2420/C/15/3005897

38. The enforcement notice is corrected in section 3 by deleting from the allegation the words "and the use of the same for the unauthorised parking of non-agricultural vehicles" and varied by:

    (i) deleting the first requirement "(a)" in section 5;

    (ii) deleting the second requirement "(b)" and substituting "Break up the unauthorised hard standing hatched green on the Plan, except for the area 3.5m wide along the line of the pre-existing track running west from the waste transfer station and parallel to the northern boundary hedge" and labelling that requirement "(a)";

    (iii) re-labelling the original requirement "(c)" as requirement "(b)"; and

    (iv) deleting the times for compliance in section 6 and substituting:

    "(a) 4 months after the notice takes effect

    (b) 5 months after the notice takes effect"

39. Subject to this correction and these variations the appeal is 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 1990 Act as amended.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Ambrose MRICS C.Env	A L P Ambrose Minerals Planning & Development Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Craig Allison	Planning Enforcement Officer, Hinckley & Bosworth Borough Council
Nic Thomas	Chief Planning Officer, Hinckley & Bosworth Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

1	Council's notice of hearing
2	Extract from Sweet & Maxwell's Encyclopedia of Planning Law and Practice (paragraph 3B-2122/2)
3	List of suggested conditions