The Planning Inspectorate

Appeal Decisions

Site visit made on 15 February 2022

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2022

Appeal A: APP/B5480/C/20/3255674
Appeal B: APP/B5480/C/20/3255675
The Land known as G3 Fisheries, Aveley Road, Upminster, RM14 2TN

- Appeals A and B are made by Mr Martin Free o/b G3 Fisheries and Mr Daniel Grace under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice (ref: ENF/811/17) issued by the Council of the London Borough of Havering on 28 May 2020.
- The breach of planning control as alleged in the notice is, without the benefit of planning permission:
  i. Within the last 10 years, the unauthorised material change of use of the land shown hatched in black on the [plan attached to the notice] to a sui generis use as a public fishing area and for residential purposes; AND
  ii. Within the last 4 years the unauthorised development by the formation of hard surfaces, siting of containers, formation of a pond, erection of buildings in connection with the fishing lake, customers toilets and erection of 2 metre high metal palisade fencing.
- The requirements of the notice are to:
  i. Cease the use of the land shown hatched in black on the attached site plan as a commercial fishing area or for residential use; AND
  ii. Remove all metal palisade fencing; AND
  iii. Remove all containers, remove all buildings, remove the mobile home, remove all equipment associated with the fishing lake, including any buildings used as offices and remove any equipment used in preparation of fishing bait in the open yard; AND
  iv. Remove all hard surfaces; AND
  v. Remove from the site all building materials and debris associated with carrying out the above steps.
  vi. Restore the land to its condition as existed before the breaches occurred.
- The period for compliance with the requirements is three (3) months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990. Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990.

FORMAL DECISIONS

Appeals A and B

1. It is directed that the enforcement notice be corrected and varied by:

   - The deletion of sub-paragraphs 3.i and 3.ii and the substitution of: 'Within the last 4 years, the carrying out of unauthorised operational development involving the formation of hardstanding and a pond plus the installation of storage containers including a refrigeration unit, a container with fishing

club member facilities, a portacabin, a canopy and fencing on the land shown hatched in black on the plan attached to this notice'.

- The deletion of sub-paragraph 5.i. and the substitution of 'i. Remove the hardstanding, pond, storage containers and refrigeration unit, container with fishing club member facilities, portacabin, canopy and fencing'.
- The deletion of sub-paragraphs 5.ii, 5.iii and 5.iv, and the renumbering of sub-paragraphs 5.v and 5.vi as 5.ii and 5.iii respectively.
- Deleting three months and substituting nine (9) months as the period for compliance with the notice.

2. Appeal A is allowed to the extent that planning permission is granted for the formation of a pond at the land known as G3 Fisheries, Aveley Road, Upminster, RM14 2TN on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

3. Appeals A and B are dismissed, and the enforcement notice is upheld as corrected and varied in respect of the other alleged operational development. Planning permission is refused for the formation of hardstanding plus the installation of storage containers including a refrigerated unit, a container with fishing club member facilities, a portacabin, canopy and fencing at the land known as G3 Fisheries, Aveley Road, Upminster, RM14 2TN on the application deemed to have been in respect of Appeal A under s177(5) of the Town and Country Planning Act 1990.

PRELIMINARY MATTERS

4. In this decision, references to the 'appeals site' or 'site' should be taken as meaning the area edged in black on the plan attached to the enforcement notice. The site, which includes a lake and surrounding land, is bound to the west by Aveley Road and to the north by what I shall call the 'lane' leading to adjacent properties including Delta Force Paintball (DFP). The lake is one of several in the wider area and sometimes known as the 'main lake'.

5. I shall refer to the part of the site that is shown hatched in black on the plan as the 'hatched area'. It is between the lake and Aveley Road, and the largest area of dry land within the site. There is a vehicular access to the hatched area on the splayed corner of the lane and Aveley Road. Neither the access nor gate across it are subject to the notice.

6. Appeals A and B were made together, but the supporting statement refers to the appellant singular throughout. I construe from the statement that the site is owned or part-owned by Mr Martin Free or G3 Fisheries. I am not aware of Mr Daniel Grace's exact interest in the land but have no reason to question his standing in these proceedings.

7. The Council appear to have made two mistakes in their statement of case: the notice does not allege that there is any fishing tackle shop, and the appellants have not made a ground (e) appeal that the notice was not properly served.

THE ALLEGED FISHING USE AND OPERATIONAL DEVELOPMENT

8. The notice alleges that there has been a change of use to 'public fishing' but requires that 'commercial fishing' must cease. The Council has not explained their choice of either term or which they prefer.

9. The appellants state that the lake is used for recreational fishing by members of a club or syndicate. For that reason, and since the Council have said that the land is not in fact open to the public, the term 'public fishing' cannot be right. I also find the term 'commercial fishing' unhelpful since that could be read as implying that the anglers fish in order to sell their catch. I find that the use would be most accurately described as 'the use of land for the purposes of a private recreational fishing club'.

10. The alleged operational development is within the hatched area as follows:

- The 'hard surfaces' extend from the corner access to form a drive and yard where cars may be parked, the mobile home is stationed and the 'containers', 'buildings' and 'customer toilets' are installed. Past those structures, there is more hardstanding for additional car parking.
- The alleged 'containers', 'buildings' and 'customer toilets' are shown on the appellants' Existing Site Plan (AP-01) as being arranged roughly in an L-shape on the yard, so that they are diagonally opposite the corner access and they back or stand side onto the lake.
- The pond is further south and connected to the hardstanding by a path.
- The fencing is installed around the yard and along the lakeside edge.

APPEALS A AND B ON GROUND (B)

11. An appeal on ground (b) is that what is alleged by the enforcement notice has not occurred. As with grounds (c) and (d), the onus is on the appellants to make their case on the balance of probabilities. I must accept their evidence if it is sufficiently precise and unambiguous, and there is nothing to contradict their version of events or make it less than probable.

Whether the Alleged Change of Use has Occurred

12. The appellants' first argument on ground (b) is that there is no residential use as alleged. They accept that a mobile home (or caravan) stands on the hatched area, but not that it is lived in. It belongs to one of the appellants who stationed it on the land because of parking restrictions outside his home.

13. Caravans can be on land for many different reasons and so it was unwise for the Council to assume that 'the presence of a mobile home indicates residential use is taking place'. I saw a few small domestic items such as mugs, plus bags which may have contained personal effects in the mobile home. Nonetheless, it was sparse and shabby and did not appear lived in.

14. On the balance of probabilities, I find that the alleged change to residential use has not occurred. It appears more likely, from the appellants' evidence, that the hatched area is being used for the parking or storage of the caravan. If the notice misdescribes the alleged use, it does not follow that no change of use has occurred at all.

15. Under s176(1)(a) of the Town and Country Planning Act 1990 (TCPA90), I can correct any error in the notice so long as that will not cause injustice to the appellant or local planning authority. The alleged residential use is only appealed on ground (b). Had the notice alleged from the outset that there has been a change to parking or storage use, the appellants would have needed

to submit different evidence to argue that the matter has not occurred and they might have wished to defend the use through other grounds of appeal.

16. The Council might not want to enforce against the parking or storage of a caravan. If they do, I cannot prejudge what their evidence or reasons for doing so would be. Thus, injustice would be caused to both parties if the notice was corrected to allege that there has been a different change of use. However, I can correct the notice so as to simply delete all references to residential use and the caravan. Doing so would not prevent the Council from enforcing against another material change of use which appears in their view to have taken place.

17. The appellants have also pleaded ground (b) in relation to the alleged fishing use, but their case that the use is immune from enforcement action actually falls to be considered via ground (d).

Whether the Alleged Operational Development Occurred

18. The appellants argue that 'there has not been any erection of buildings, there are temporary structures only on the site'. The nature of the structures is mostly relevant in this case to the question of immunity, so again I shall deal with this matter through ground (d). The appellants do not dispute that there are structures on the hatched area as a matter of fact.

19. The appellants also suggest that the alleged fence is not palisade as suggested by the notice but formed of a 'green heavy gauge welded wire mesh'. The photographs submitted by the appellants do indeed show stretches of wire mesh fencing, but I saw that the means of enclosure as a whole also includes some palisade fencing and gates.

20. The substantive allegation is that the unauthorised erection of fencing has taken place; the appellants have not shown that this has not occurred. It would cause no injustice for me correct the notice so that it simply refers to 'fencing' and then the appellants' case that the enclosure should be permitted can be properly considered through ground (a).

Conclusion on Ground (b)

21. I conclude that the notice should be corrected so that all references to the mobile home and residential use are deleted, and so that the fencing is not described by reference to its design or material. To that extent only, Appeals A and B succeed on ground (b).

APPEALS A AND B ON GROUND (C)

22. Ground (c) is that the matters alleged by the notice did not constitute a breach of planning control, perhaps because planning permission was not required or was already granted for the development alleged. The appellants pleaded this ground in relation to the alleged pond, but their arguments are more relevant to grounds (d) and (a). The appellants have not shown that the pond or anything else alleged by the notice is not in breach of planning control. Appeals A and B fail on ground (c).

APPEALS A AND B ON GROUND (D)

23. Ground (d) is that, on the date that the notice was issued, it was too late for the Council to take enforcement action against the matters alleged.

Whether the Alleged Fishing Use is Immune from Enforcement Action

24. Under s171B(3) of the TCPA90, no enforcement action may be taken in respect of a material change of use of land after the end of the period of ten years beginning with the date of the breach. Thus, the appellants need to demonstrate that the alleged change of use to fishing occurred at least ten years before the notice was issued on 28 May 2020, and the unauthorised fishing use took place without substantial interruption for a ten year period.

25. The appellants claim that the site has been used for the purposes of a private recreational fishing club for almost 60 years. They say that the site, including the hatched area, was part of Bush Farm before it was leased to Priory Angling Club (PAC) in 1963 and the lake was formed within a gravel pit. The appellants also assert that PAC used the site for fishing from 1963 until 2014 when site was leased to Essex Leisure and Recreational Ltd (ELRL), who continued the use until 2018 when the site was sold to the appellants.

26. The appellants have submitted a letter from someone who was a member of PAC between 1992 and 1996. He states that he had relatives who were club or club committee members during the 1980s and 1990s, and a friend who was on the committee until 2014. He also notes that the land was owned by St Albans Sand and Gravel, and then Cemex, who both leased the site to PAC. None of his or the appellants' evidence relating to PAC or ELRL is contested.

27. In their '2020 email' objecting to the appeal, a local resident stated that 'the fishing lakes were only constructed 7 years ago'. However, the photographs in their '2013 email' showed the excavation of a crater which might have become the alleged pond but looked too small for a lake. In any event, the Council is not enforcing against the construction of the main lake or its use for fishing. There is nothing from the Council to make it less than probable that the lake was used, as claimed, for fishing for a period of at least ten years without substantial interruption between 1963 and the date of the notice.

28. That being so, the question is why the Council does not consider fishing to be the (or a) lawful use of the whole site. Paragraph 7.2 of the Council's statement says, presumably with reference to the hatched area, that 'prior to the occupation of this enclosed site, it was not part of the fishing lake'. Yet the evidence points to the hatched area probably being within the same planning unit as the rest of the site[1]:

    - It is undisputed that the whole site has been a single unit of occupation since 1963. There is no claim that the hatched area was occupied by anyone other than PAC or ELRL before the appellants.
    - There is no evidence that the hatched area was enclosed before the appellants installed the alleged fencing – and it is punctuated by at least one gate so that the hatched area and lake remain physically connected.
    - Since the hatched area is in the same fishing use as the lake, the whole site must, at least now, be functionally integrated.

[1] Since there are other lakes in the area, I could not say whether the site is a single planning unit or is part of a larger one. However, it is only necessary for me to establish whether the hatched area is within the same planning unit as the rest of the site.

29. There can only have been a material change of use as described by the notice if the hatched area was functionally separate from the lake before the appellants' occupation. The onus of proof is not on the Council but it is striking that they have not described any previous use of the hatched area. The site is within the Thames Chase Community Forest (TCCF) but that has not prevented the use of the lake for fishing and would be unlikely to mean there is any functional separation between the use of the lake and hatched area[2].

30. Paragraph 7.19 of the Council's statement indicates that, before the appellants' time, the hatched area 'had green vegetation growing and had not been occupied'. A Google Earth photograph dated 4 June 2015 indeed shows the hatched area as largely covered in trees and devoid of the operational developments alleged in sub-paragraph 3.ii of the notice.

31. However, neither the June 2015 nor any other photograph shows that there was no use of the hatched area, or what any use might have been, or whether or not the land was occupied in the past. The Council's statement that the hatched area was 'never' previously open to 'members of the public' is not evidence that members of PAC or ELRL were unable to enter the hatched area for the purpose of private recreational fishing.

32. In their 2013 email, the local resident mentioned above contacted a Councillor to say that a footpath was blocked as a result of 'clearing' works and 'what made this walk pleasant, **the small copse with trees either side of the footpath** has been spoilt to such an extent the wildflowers and wildlife may not return and it will not be so **popular** in the future' [my emphases]. Since that email was forwarded for my consideration and it includes photographs of what may be work on the pond, it is probable that the local resident was writing about the hatched area.

33. The appellants have suggested that 'the land immediately adjacent to the lake within the hatched area forms part of the walkway around the lake and has been used by the fishing community for more than 50 years'. It may not sound like that 'walkway' was in a 'copse' but the June 2015 aerial photograph shows two linear gaps, both 'with trees either side', running through the hatched area. One gap was close to the lake and provided access to a clearing at the waterside; the other was nearer to Aveley Road.

34. A path on either line shown in the photograph could have feasibly been connected to the 'track' on the south side of the lake shown on the plan attached to the notice. One way or another, there probably was some kind of footpath through the hatched area as the appellants and local resident suggest. It may not have been a public right of way, but it must have been accessible to **some** people if it was 'popular' in 2013. It may remain to this day in part, as the existing path to the pond.

35. Thus, there is evidence that, from 1963, PAC and then ELRL leased the whole site for private recreational fishing club use and it was physically possible for club members to access the hatched area or western side of the lake. There is no evidence, however, that the hatched area was **not** used for fishing. On the balance of probabilities, the hatched area has been functionally connected to the lake and part of the same planning unit as the site since 1963, and the

[2] The National Planning Policy Framework notes that Community Forests provide opportunities for recreation.

site has been in use for the purposes for a private recreational fishing club for more than ten years without substantial interruption.

36. On the date that the notice was issued, it was probably too late for the Council to take enforcement action against the alleged use of the hatched area for the purpose of a private recreational fishing club.

Whether the Alleged Operations are Immune from Enforcement Action

37. Under s171B(1), no enforcement action may be taken in respect of building, engineering, mining or other operations in, on, over or under land after the end of the period of four years beginning on the date when the operations were substantially completed.

The Alleged Siting of Containers and Erection of Buildings and Customer Toilets

38. As noted above, the appellants claim that there are no buildings on the site as alleged, but only temporary structures associated with the lawful use of land for fishing. The implication is that operational development has not taken place for the purposes of s171B(1) and the four year rule does not apply.

39. Five of the structures are shipping-type containers, with three being used for the storage of lake maintenance and/or fishing equipment, the fourth containing a refrigeration unit for the storage of bait and catch, and the fifth being adapted to accommodate customer toilets, showers and tea-making facilities. The other two structures are a portacabin used as a fishing club office, and a canopy which provides cover for the preparation of bait.

40. Containers and portacabins are constructed to be moveable and sometimes regarded as being a mere feature of a use of the land. As a matter of fact and degree, however, the installation of a container or portacabin may and often does amount to a building operation. Whether or not any particular structure should be described as a building should be considered with regard to three factors: size, permanence and physical attachment.

41. None of the containers are so large as to have required construction on the hatched area by a professional builder. The same is true of the portacabin and canopy, which seems to be made from some kind of sheeting attached to scaffolding poles knocked into the ground. However, there are seven of these 'temporary' structures altogether and they have been laid out to form an integrated work and customer area close to the access, car park and lake. Whether the containers, portacabin and canopy were installed at the same or different times, there must have been some site planning.

42. In terms of permanence, the appellants are clear that they want to replace the structures. There are no drawings before me of any potential storage, bait preparation or office buildings, but the appellants are clear that they hope to obtain planning permission for such. They appointed architects who did submit plans for a new customer toilet/shower/café block to the Council for pre-application advice (ref: PE/00365/19) in May 2019. However, the Council took a year to reply to the enquiry and then issued the notice. I can understand the appellants' frustration at being unable to make progress.

43. Nonetheless, the fact is that permission has neither been applied for nor granted for any replacement building, and that begs the question as how temporary the structures will be. The appellants have said that they consider

it 'necessary' to have storage, bait preparation, office and customer facilities on the site. They have also said that the existing structures should not be removed until replacements are approved, despite there being no timetable for or certainty of that. The appellants have not shown when they would move the structures if alternative buildings can never materialise.

44. None of the structures are likely to have foundations. The containers and portacabins probably rest by their own weight and the canopy may not be durably fixed to the ground. However, the structures are all mounted on a permanent base in the sense that they are sited on the hardstanding, and they appeared to be connected to electricity and/or water services if not to each other. Without prejudice to the ground (a) appeal, the placement and use of the structures has resulted in a significant change to the physical characteristics of the hatched area.

45. A building does not need to remain for forever in order to be 'permanent'. The containers, portacabin and canopy are capable of being considered temporary but not shown to be so in this case. As a matter of fact and degree, by reason of their layout and integration, their housing of 'necessary' facilities and the physical changes they have caused to the site, I find that the installation of the structures probably involved building operations.

46. It follows that s171B(1) and the 'four year rule' apply. The appellants make no case that any structure was substantially completed by 28 May 2016. On the date that the notice was issued, it was probably not too late for the Council to enforce against the 'containers…buildings…[and] toilets'.

The Alleged Hard Surfaces, Pond and Fencing

47. The appellants do not dispute that the operational development was involved in the formation of hard surfaces or pond, or in the installation of fencing. The appellants also seem to accept that the hardstanding and fencing are not immune from enforcement action. There is nothing to show that either was substantially complete four years

48. The appellants have claimed that the alleged pond 'has been there for some time' but they have submitted little supporting information. If 'work originally started on the construction of the' pond in 2013 as per the local resident's email, it would not follow that the pond was substantially completed at or even around the same time. The 2013 photographs show a fairly shallow crater that was probably unlined and certainly empty of water.

49. In the June 2015 aerial photograph, where the pond is now appears obscured by trees. The area is seen as cleared but not including a pond in a Google Earth image dated 8 April 2017. The pond is identifiable for the first time in the aerial photograph dated 7 May 2018. On the balance of probabilities, it was not substantially completed four years before the notice was issued.

Conclusion on Ground (d)

50. I have found that, on the balance of probabilities, the hatched area is and has long been part of the same planning unit as the main lake. On the date of the notice, the site had for at least ten years without substantial interruption for the purposes of a private recreational fishing club. It follows that the use of the hatched area for fishing is immune from enforcement action under s171B(3) of the TCPA90.

51. However, I have also found that the installation of the containers, portacabin and canopy probably involved building operations which were not substantially complete by 28 May 2016. On the date that the notice was issued, it was not too late for the Council to enforce against all of the operational developments described in paragraph 3.ii of the notice. I conclude that Appeals A and B only succeed in part on ground (d). The notice should be corrected so as to delete paragraph 3.i plus those requirements which relate to the alleged fishing use.

52. The appellants have asked me to issue a lawful development certificate (LDC), which states that the existing use of the whole site for fishing was lawful on the date that Appeals A and B were made. However, the power set out under s177(1)(c) of the TCPA90 to issue such an LDC should only be exercised in exceptional circumstances.

53. Appeal A is also proceeding on ground (a), which is that planning permission ought to be granted and which gives rise to a deemed planning application (DPA). The fee for consideration of the DPA is double that charged for a planning application made directly to a local planning authority under s70 of the TCPA90. If an appeal succeeds on ground (d), so that ground (a) does not fall to be considered, the double fee will be refunded unless an LDC is issued under s1771(1)(c); in that case, the double fee will be appropriated.

54. In this case, because grounds (b) and (d) only succeeded in part, ground (a) and the DPA will still fall to be considered in respect of the alleged operational development. However, it is not necessary or appropriate for me to consider whether to grant planning permission for the alleged change of use, and so the double fee relating to that element of the DPA should be refunded.

55. The appellants have not suggested I should disadvantage them financially. I shall not grant an LDC because they can rely on my findings that a change to residential use has not occurred, and the use of the land for the purposes of a private recreational fishing club was immune from enforcement action on the date that the notice was issued. The appellants will be refunded the part of the double fee which pertained to the alleged change of use. They can, if they wish, apply directly to the Council, paying only a single fee, for an LDC.

APPEAL A ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

56. An appeal on ground (a) is that planning permission ought to be granted for the matters alleged in the notice. While I have found that operations have occurred as alleged, the notice should be corrected to describe the works more precisely and not attack non-development items such as 'equipment' which are associated with the lawful use.

57. It would cause no injustice for me to amend the notice so that it alleges that there has been (and requires the removal of) 'unauthorised operational development involving the formation of hardstanding and a pond plus the installation of storage containers including a refrigeration unit, a container with fishing club member facilities, a portacabin, a canopy and fencing'. That is the description of development now subject to the DPA.

58. S177(1)(a) of the TCPA90 provides that planning permission may be granted for the whole or any part of the matters alleged in relation to the whole or any part of the land. The Council only discusses the collective effects on the Green

Belt of the hardstanding, pond, containers, portacabin, canopy and fencing but the merits of every structure fall to be considered.

59. I cannot comment on the merits of the plans for a new toilet/shower/café building which were subject of the pre-application enquiry to the Council.

Planning Policy

60. The notice refers to the Havering Core Strategy and Development Control Policies Development Plan Document (CSDPD) but that was replaced by the Havering Local Plan (HLP) adopted in November 2021. Similarly, the London Plan 2016 referred to in the notice has been superseded by the London Plan 2021 (the London Plan). I shall determine this appeal on the basis of current planning policies which correspond to those cited in the notice.

Main Issues

61. The appeal site lies within the Metropolitan Green Belt as well as the TCCF. I consider that the main planning issues in this case are:

- Whether the hardstanding, pond, containers, portacabin, canopy and fencing are inappropriate development in the Green Belt, with regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
- The effect of the hardstanding, pond, containers, portacabin, canopy and fencing on the character and appearance of the site and surrounding area.
- What weight, if any, should be ascribed to considerations in favour of the hardstanding, pond, containers, portacabin, canopy and/or fencing.
- Whether any harm caused by reason of inappropriateness and any other harm would be clearly outweighed by other considerations, so that there are very special circumstances to justify the developments.

Reasons

Green Belt

62. The Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The purposes of Green Belts include checking the unrestricted sprawl of large built-up areas and assisting in safeguarding the countryside from encroachment. Inappropriate development is harmful to the Green Belt by definition.

63. While the notice is not and does not need to be explicit on this point, it describes two types of operational development: the formation of the hardstanding and pond would have amounted to engineering operations, while the containers, portacabin, canopy and fencing would have been constructed or installed though building operations. The Framework distinguishes between engineering and building works in the Green Belt.

The Hardstanding and Pond

64. Paragraph 150 of the Framework states that engineering operations are not inappropriate in the Green Belt provided that they preserve openness and do not conflict with the purposes of including land within the Green Belt. Creating a pond typically involves excavating and surfacing land so as to form a crater

that can be and stay filled with water. In this case, there is no suggestion that displaced earth was used to raise land levels elsewhere on the site, or that whatever formed the base of the pond erodes the openness of the Green Belt.

65. Save for a pole, I saw no development above ground that could be associated with the pond. I find that it has not reduced and would not be perceived to reduce the openness of the Green Belt. It does not represent urban sprawl; it is compatible with and does not encroach upon the countryside. Its formation was not inappropriate development in the Green Belt.

66. However, the same cannot be said for the hardstanding. It is used as a base not only for the structures that I found to be permanent, but also the caravan discussed above and vehicles parked by customers and staff. Even though the latter will be moved on and off the site, the hardstanding causes a loss of openness and encroaches upon the countryside. It is inappropriate development in the Green Belt.

The Portacabins, Containers, Canopy and Fencing

67. Paragraph 149 of the Framework provides that the construction of new buildings should be regarded as inappropriate in the Green Belt, but exceptions to that rule include the provision of appropriate facilities for outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

68. I am satisfied that all of the containers, and the portacabin and canopy have been installed for purposes directly connected to fishing, such that they could be described as facilities for outdoor recreation. However, I cannot find that they are 'appropriate facilities' because, as discussed further below, the appellants have failed to explain how they are suitable in terms of size or design for their purposes. In any event, they reduce the openness of the Green Belt and encroach upon the countryside.

69. The fencing was erected for security purposes and I would be loath to describe as a facility for outdoor recreation. I also consider that, while the mesh in particular has an open design, the fencing as a whole is high, long and substantial enough to reduce the physical and visual openness of the Green Belt. It encroaches upon the countryside and is, like the containers, portacabin and canopy, inappropriate development in the Green Belt.

Conclusion

70. I conclude that the pond is not inappropriate development in the Green Belt but the hardstanding, containers, portacabin, canopy and fencing are. In accordance with the Framework, I attach substantial weight to the harm caused by those developments to the Green Belt.

Character and Appearance

71. Consistent with the location of the site in the Green Belt and TCCF, and if it were not for the appeal developments, the land around the lake would be largely covered by trees. There are also fields to the north and south of the site, and there are other lakes and wooded areas to the east.

The Hardstanding, Containers, Portacabin, Canopy and Fencing

72. The appellants state that the hard surfaces cover around 770 square metres. The aerial photographs suggest that several trees must have been felled in order for the hardstanding to be laid. Whether or not the trees had any protection, I consider that their loss and replacement with a yard and car park will have caused serious harm to the peaceful character and verdant appearance of the land around the lake and this part of the TCCF. That the hardstanding is roughly surfaced, not paved or tarmacked, makes no difference to this assessment.

73. I also find that the containers, portacabin and canopy are utilitarian and unsightly structures which would befit a construction or industrial site more than community forest land in recreational use. The same applies to the fencing which appears intrusive within the landscape by reason of its height, mesh and palisade designs, length and position particularly at the entrance to the yard and by the lake.

74. I would not refuse permission for any of the appeal developments on the basis that they displaced or reduced access to the pre-existing footpath, given the Council's evidence that the land was not open to the public before. However, the hardstanding, containers, portacabin, canopy and fencing will be seen by staff and members of the fishing club. The drive and part of the yard, with some cars parked upon and fencing around the latter, are also visible through the corner access to persons using the A40 and/or lane. From any vantage point, I consider that the developments detract unacceptably from the character and appearance of the site and surrounding area.

75. The appellants suggest that a car park at the DFP site was approved in part because it was informal in construction, like the appeal hardstanding. They also note that the Council has permitted the installation of metal mesh fencing that is well over 2m high at DFP. However, I do not know what impact the approved works might have had on any pre-existing trees and I also note that the DFP site is further from the A40.

76. That said, there is another expanse of hardstanding by Aveley Road, at a plant hire depot opposite the hatched area. That is partly set back from the roadside but it covers a vastly greater area than the appeal hard surfaces. But I know even less about the circumstances in which that depot was permitted than I do about DFP. The same applies to the other industrial or commercial developments in the wider area. None of them justify the landscape or visual harm caused by the appeal structures.

77. I conclude that the hardstanding, containers, portacabin, canopy and fencing cause unacceptable harm to the character and appearance of the site and surrounding area, which falls within the TCCF. They conflict with London Plan Policy D3, HLP Policy 26 and the Framework, which require that development responds to the existing character of a place; is informed by, respects and complements the distinctive qualities, identity, character and geographical features of the site and local area; is visually attractive; and is sympathetic to the local character and landscape setting.

The Pond

78. The formation of the pond will also have led to tree loss but not to an extent or for a reason that results in unacceptable landscape harm. The pond is a small water body in an area where such features add to local distinctiveness.

The June 2019 aerial photograph suggests and I saw that, after the pond was formed, the land around it was left to regenerate naturally.

79. I consider that the pond causes no unacceptable harm to the character and appearance of the site or surrounding area, and it does not conflict with London Plan Policy D3, HLP Policy 26 or the Framework in that regard.

Other Considerations

80. I have already found that the containers, portacabin, canopy and fencing are not 'appropriate facilities' for outdoor recreation in Green Belt policy terms. Nonetheless, it is possible that why those structures and the hardstanding are on the land could justify a grant of planning permission.

81. I accept that the appellants need to store equipment so that the lake can be properly and regularly maintained in order to safeguard the fish and their habitat. I am also satisfied that it is important to the appellants or their customers to have refrigerated storage for bait and catch; a preparation area for bait; toilets, showers and tea-making facilities, and a fishing club office.

82. However, the question is whether the **buildings** used for those purposes should be approved. The containers, portacabin and canopy could not be described as in any way lavish, but the evidence suggests that PAC and ELRL operated private fishing clubs from the site without any structures on the hatched area at all. I appreciate that times change and any business may need investment to remain viable. However, the appellants have not submitted any real analysis of their club or customer needs.

83. There is no information to show that the containers, portacabin or canopy are sized or designed for purpose and to minimise intrusion on the Green Belt. I could not say that the existing customer toilet/shower/café block is needed on the basis that one customer has written to say they use it, and the proposed building subject to the 'pre-application' enquiry would have been even larger.

84. In relation to the hardstanding, I accept that the appellants and their customers need to park close to the lake – and I have noted that the notice does not attack the corner access. Another reason why the Council approved the DCP car park was that public transport is lacking in this area. A customer has written to inform me that his disabled son can only fish at the site because there is accessible parking close to the lake, and so I must take it that a refusal of permission for the hardstanding would reduce equality of access to a recreational use. However, none of those points serve to explain why the hardstanding covers the amount of the ground that it does.

85. The appellants have described their need for site security and submitted a letter in support of their case for the fencing from a Metropolitan Police officer who works on a national operation to tackle the theft of fish. Again, however, what is missing from the appellants is any explanation as to why the appeal fencing is so high, long and designed as it is, and other means of enclosure and security measures would not provide the same benefits.

86. Since the appellants have not shown that the appeal hardstanding, containers, portacabin, canopy or fencing are no larger than necessary and are properly designed for their purposes, I can only attach moderate weight to the appellants' needs for accessible parking, storage, bait preparation,

customer toilet/shower/tea facilities and security facilities as a consideration in favour of a grant of permission.

87. I also attach moderate weight to the appellants' need for the pond as a place to keep sick fish. I do not need to dwell on this matter because the pond causes no unacceptable harm in any event.

Conclusion on Ground (a) and the Deemed Planning Application

88. I have found that the pond is not inappropriate development in the Green Belt or unacceptably harmful to the character and appearance of the site or surrounding area. It does not conflict with London Plan Policy D3, HLP Policy 26 or the Framework and so planning permission should be granted for it. The Council has not suggested that any planning conditions should be imposed and I find that none are necessary.

89. However, the hardstanding, containers, portacabin, canopy and fencing are all inappropriate development in the Green Belt. In accordance with the Framework, I attach substantial weight to the harm caused to the Green Belt. I also find that the harm caused by the structures to the character and appearance of the site and surrounding area is serious and conflicts with London Plan Policy D3, HLP Policy 26 and the Framework.

90. The appellants' and their customers' needs for accessible car parking, storage, bait preparation, customer toilet/shower/tea and security facilities only carry moderate weight in favour of the hardstanding, containers, portacabin, canopy and fencing. It follows that the considerations in favour of the structures do not clearly outweigh the harm caused to the Green Belt and in respect of character and appearance. Very special circumstances as required by the Framework do not exist to justify the development.

91. The appellants' case for ground (f) below includes that they should be allowed to retain the containers, portacabin and canopy 'until the permanent facility is completed'. I should therefore consider whether or not a grant of temporary permission might be justified. The Planning Practice Guidance (PPG) provides that this could be the case where a trial run is needed in order to assess the effect of the development on the area. To all intents and purposes, there has already been a trial run here and I am clear that the containers, portacabin and canopy have unacceptably harmful effects.

92. The PPG also allows for a grant of temporary permission where it is expected that the planning circumstances will change in a particular way at the end of the period of permission. As discussed further in relation to ground (g), there can be no expectation that a replacement building will ever be approved or finished. It would not be appropriate to grant temporary permission for the containers, portacabin or canopy in this case.

93. I have had due regard to the Public Sector Equality Duty set out under the Equality Act 2010. The harm caused by the appeal developments outweighs their benefits in terms of eliminating discrimination against persons with the protected characteristics of disability, advancing equality of opportunity for those persons and fostering good relations between them and others.

94. I conclude that Appeal A should succeed in part. I will grant planning permission for the formation of a pond but it is proportionate and necessary to uphold the notice with corrections and refuse to grant planning permission

in respect of the formation of hardstanding plus the installation of storage containers including a refrigeration unit, a container with fishing club member facilities, a portacabin, a canopy and fencing.

95. I shall not vary the notice so as to delete the requirement to remove the pond. S180 of the TCPA90 provides that where planning permission is granted after the service of an enforcement notice, for any development carried out before the grant of permission, the notice shall cease to have effect so far as inconsistent with that permission. In other words, the grant of permission for the pond shall override the requirement of the notice to remove the pond.

APPEALS A AND B ON GROUND (F)

96. An appeal on ground (f) is that the requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach.

97. The notice as issued required the cessation of the alleged unauthorised uses of the land and the removal of the alleged unauthorised structures. Thus, the purpose of the notice was to remedy the breach. The ground (f) appeals could only succeed if the appellants show that the requirements are excessive to remedy the breach, and that lesser steps would achieve the same aim.

98. The appellants seek to retain the appeal fencing for security reasons. However, I have considered the merits of the enclosure and found that neither permanent nor temporary permission should be granted for it. It is necessary and not excessive that the fencing is removed in order to remedy the breach.

99. I have also addressed through ground (a) the appellants' arguments that they should be allowed to retain the containers, portacabin and canopy 'until the permanent facility is completed'. That matter is also relevant to ground (g) but not (f). The appellants have not shown that requiring the removal of any structures at some point is excessive to remedy the breach of planning control. Appeals A and B fail on ground (f).

APPEALS A AND B ON GROUND (G)

100. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellants seek 12 rather than three months to comply with the requirements of the notice.

101. From my findings above, the notice will be corrected to delete the allegation and requirements relating to the fishing and residential uses, and the appellants will not need to remove the pond. However, their case on ground (g) is that they need more than three months to gain planning permission for buildings to replace the containers, portacabin and canopy.

102. I have accepted that those structures and the hardstanding and fencing are connected to the lawful use of the site for the purposes of a private recreational fishing club. Without prejudice, I consider that the appellants should be afforded time to negotiate with the Council, draw up plans and make a new planning application for any operational development that might be justified on this site. That process could not realistically take place within three months but equally there is no evidence that it would take a year.

103. I would, again without prejudice, urge the appellants to make contingency plans in case they cannot secure any planning permission and have to manage the fishing lake without the hardstanding, containers, portacabin, canopy and fencing. That exercise could be carried out concurrently with the planning process and again should not take 12 months.

104. I consider that it would be reasonable to require the removal of those structures and compliance with the other steps set out in the notice within nine months. To that extent, Appeals A and B succeed on ground (g).

CONCLUSION

105. For the reasons given, I conclude that Appeal A should succeed in part; I will grant planning permission for the pond but otherwise uphold the notice with corrections and a variation and refuse to grant planning permission in respect of the hardstanding, containers, portacabin, canopy and fencing. By virtue of s180 of the TCPA90, the requirements of the notice will cease to have effect so far as they are inconsistent with the planning permission granted.

Jean Russell

INSPECTOR