



Appeal Decisions

Site visit made on 23 November 2022

by **Katie Peerless Dip Arch RIBA**

an Inspector appointed by the Secretary of State

Decision date: 14 December 2022

4 Appeals at the land known as Chafford Park Farm, Aveley Road, Upminster, RM14 2TE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Robert Henry Pope against an enforcement notice issued by London Borough of Havering.
 - The notice, numbered ENF/168/18, was issued on 24 April 2021.
 - The period for compliance with the requirements is: 3 months
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.
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Appeal A Ref: APP/B5480/C/21/3284673 (Plot A)

- The breach of planning control as alleged in the notice is: i. Within the last 10 years the unauthorised material change of uses of Plot A (shown hatched on the plan attached to the enforcement notice) from use connected with the servicing, repair, rebuilding, dismantling, spraying and parking of motor vehicles to a use as a scaffolding yard including storage and maintenance of scaffolding equipment and administration offices for the business. ii. Within the last 4 years, unauthorised operational development of Plot A (shown hatched on the plan attached to the enforcement notice) in the form of the erection of sheds and fencing using metal corrugated sheets exceeding 5m high, racking erected using scaffolding poles and corrugated sheets, the siting of metal containers, and siting of portable buildings.
- The requirements of the notice are to:
 - i. Cease the use of the land shown as Plot A on the attached plan hatched in black from use as a scaffolding contractors yard AND
 - ii. Remove all sheds, buildings erected using scaffolding poles and corrugated sheets; AND
 - iii. Remove all racks erected using scaffolding poles to store scaffolding materials; AND
 - iv. Remove metal containers stacked on top of each other used as offices and for storage of scaffolding materials, building materials and equipment in association with the scaffolding business; AND
 - v. Remove the enclosures made from corrugated sheets exceeding 3m in height and hard surfacing within the enclosure; AND
 - vi. Remove from the site all scaffolding poles, boards and scaffolding equipment including machinery; AND
 - vii. Remove from the site all metal containers and all portacabins used as offices; AND
 - viii. Reduce height of boundary fence fronting Aveley Road to a maximum height of 2 metres; AND
 - ix. Remove from the site all building materials and debris associated with carrying out the above steps.

**Appeal B Ref: APP/B5480/C/21/3284679
(Plot B)**

- The breach of planning control as alleged in the notice is: i. within the last 10 years the unauthorised change of use of Plot B (shown hatched on the plan attached to the enforcement notice) from use connected with or ancillary to the servicing, repair, rebuilding, dismantling, spraying and parking of motor vehicles to a use as demolition business yard/premises including storage and maintenance of demolition plant, machinery and equipment, storage buildings, porta loos, parking of HGVs, trucks and cars, storage/deposit of building materials, rubble and administration offices of the business. ii. Within the last 4 years the operational development with Plot B (shown hatched on the plan) comprising siting of containers, and portable buildings.
 - The requirements of the notice are to:
 - i. Cease the use of the land as Civil Engineering and demolition contractors yard including servicing and maintenance of plant machinery shown as Plot B shown hatched in black attached to the enforcement notice and from use for storage of metal containers stacked two containers high, porta cabins used as offices and other metal containers stacked on top of each other used to store goods, storage of building materials, highway safety barriers including mechanical equipment, storage of Metal roll on – roll of containers, skips, heavy duty demolition machinery, metal grabs used for demolition machinery, propane gas bottles, building rubble, wooden pallets, timber, metal gates, parking of HGV vehicles and other vehicles used in connection with demolition business;
 - AND ii. Remove from the site all metal containers stacked two containers high, portacabins used as offices, other metal containers stacked on top of each other used to store goods, building materials, highway safety barriers including mechanical equipment, JCB's, metal roll on – roll of containers, skips, heavy duty demolition machinery, metal grabs used for demolition machinery, propane gas bottles, plastic tanks, fork lift trucks, building rubble, wooden pallets, timber, metal gates including Heras fencing, HGV vehicles and other vehicles from the open spaces used in connection with demolition business.
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**Appeal C Ref: APP/B5480/C/21/3284684
(Plot C)**

- The breach of planning control as alleged in the notice is: i. Within the last 10 years the unauthorised change of uses of Plot C (shown hatched on the plan attached to the enforcement notice) from a use connected with servicing, repair, rebuilding, dismantling, spraying and parking of motor vehicles to a use as a scaffolding yard including storage and maintenance of scaffolding equipment and administration offices for the business. ii. Within the last 4 years, unauthorised operational development of Plot C (shown hatched on the plan attached to the enforcement notice) in the form of the erection of sheds and fencing using metal corrugated sheets exceeding 5m high, racking erected using scaffolding poles and corrugated sheets, the siting of metal containers including porta-cabins.
 - The requirements of the notice are to: i. Cease use of the land shown as Plot C hatched in black on the plan attached to the enforcement notice from use as a scaffolding contractors' yard involving industrial processes relating to the greasing of scaffolding poles, general maintenance and repairs of scaffolding poles, boards and scaffolding equipment and storage of scaffolding equipment including poles & boards;
 - AND ii. Remove all sheds, buildings erected using scaffolding poles and corrugated sheets;
 - AND iii. Remove all racks erected using scaffolding poles to store scaffolding materials;
 - AND iv. Remove metal containers stacked on top of each other used as offices and for storage of scaffolding materials, building materials and equipment in association with the scaffolding business;
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- AND v. Remove the enclosure made from corrugated sheets exceeding 3m in height and hard surfacing within the enclosure;
 - AND vi. Remove from the site all scaffolding poles, boards and scaffolding equipment including machinery;
 - AND vii. Remove from the site all metals containers and all porta-cabins used as offices;
 - AND viii. Reduce height of boundary fence fronting Aveley Road to a maximum height of 2 metres;
 - AND ix. Remove from the site all building materials and debris associated with carrying out the above steps.
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**Appeal D Ref: APP/B5480/C/21/3284687
(Plot D)**

- The breach of planning control as alleged in the notice is: i. Within the last 10 years the unauthorised change of uses of Plot D (shown hatched on the plan attached to the enforcement notice) from a use ancillary to the servicing, repair, rebuilding, dismantling, spraying and parking of motor vehicles to a use as a scaffolding yard including storage and maintenance of scaffolding equipment. ii. Within the last 4 years, unauthorised operational development of Plot D (shown hatched on the plan attached to the enforcement notice) in the form of the erection of racking using scaffolding poles and enclosure using Heras fencing.
 - The requirements of the notice are to:
 - i. Cease use of the land shown as Plot D hatched in black on the plan attached to the enforcement notice from use as a scaffolding contractors yard involving industrial processes relating to the greasing of scaffolding poles, general maintenance and repairs of scaffolding poles, boards and scaffolding equipment and storage of scaffolding equipment including poles & boards;
 - AND ii. Remove all racks erected using scaffolding poles to store scaffolding materials;
 - AND iii. Remove the enclosure erected using Heras fencing corrugated sheets exceeding 2 m in height and hard surfacing within the enclosure;
 - AND iv. Remove from the site all scaffolding poles, boards and scaffolding equipment including machinery;
 - AND v. Reduce height of boundary fence fronting Aveley Road to a maximum height of 2 metres;
 - AND vi. Remove from the site all building materials and debris associated with carrying out the above steps.
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Decisions

Appeal A Ref: APP/B5480/C/21/3284673

1. It is directed that the enforcement notice is varied by the deletion of the words 'sheds and' in requirement A (ii). Subject to this variation, Appeal A is dismissed and the enforcement notice is upheld as varied 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 Ref: APP/B5480/C/21/3284679

2. Appeal B is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/B5480/C/21/3284684

3. It is directed that the enforcement notice is varied by the deletion of the words 'sheds and' in requirement C (ii). Subject to this variation, Appeal C is dismissed and the enforcement notice is upheld as varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D Ref: APP/B5480/C/21/3284687

4. Appeal D is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Main Issues

5. I consider the main issues in these cases to be:

On ground (b): whether the matters alleged to be a breach of planning control have taken place as a matter of fact and, if they have:

On ground (c): whether the developments that constitute those matters are a breach of planning control and if they are:

On ground (d): whether the developments are immune from planning enforcement through the passage of time and, if they are not:

On ground (a): (i) whether the developments would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;

(ii) the effect of the developments on: (a) the openness of the Green Belt and (b) the character and appearance of the area and

(iii) 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 developments.

If all the above grounds fail:

On ground (f): whether the steps required to be taken by the notice exceed what is required to rectify the breach of planning control and

On ground (g): whether the time for compliance is reasonable.

Site and surroundings

6. The appeal site is situated in Green Belt countryside on a rural road some distance from a main settlement. There is a residential property adjacent to it and sporadic housing and other commercial properties along Aveley Road. The site is surrounded by metal fencing and at present appears to be home to three separate businesses. The centre section of the site is relatively clear but there are numbers of portacabins, some of them double height, storage bins and containers, vehicles, salvaged materials, plant and machinery and other stored items associated with these businesses distributed across the rest of the land. Two parts of the site, namely Plots C and D as identified on the plan attached to the enforcement notice, are being used as a scaffolding yard and contain portacabins and metal racking holding the scaffold poles behind metal mesh fencing.

7. Plot B is used as a yard for a demolition business and contains portacabin offices, containers, stored items and vehicles relating to this use and materials from demolition sites as listed in the enforcement notice. Plot A was not being used for scaffolding storage at the time of my visit but was fenced off from the rest of the land, behind a locked gate. I was, however, able to see that it was being used in part for external storage, in particular a large number of office chairs, and containers. There are also a number of permanent buildings on the site as a whole, which are marked on the enforcement notice plan.

Planning History

8. The site has been brownfield land for many years, as confirmed by a photograph from the 1960's submitted by the appellant and the aerial photographs submitted by the Council. However, the authorised use of the site was established in 1992 when permission was granted at appeal¹ for the use of the land for the '*servicing, repair, rebuilding, dismantling, spraying and parking of motor vehicles*'. Various conditions were attached to this consent which restricted the height of any stored items to no more than 2m, required work to vehicles to only take place within the building on the site and limiting where vehicles could be parked and stored on the site.
9. There have been no other planning applications granted on the site since then and no extant enforcement notices apply to the site, other than that which is the subject of these appeals.

Preliminary Matters

10. Although at the time of my site visit, Plot A was not in the scaffolding yard use alleged in the enforcement notice, this is the use that is the subject of the appeal and for which planning permission would be granted should the appeal on ground (a) succeed. It seems to me, however, that the current use of Plot A would, on its own, be classified as a B8 (storage and distribution) use, as would the storage of scaffolding for the business on Plots C and D.
11. The Council maintains that the only permitted use of the site is that granted on appeal in 1992 and that this is a *sui generis* use which has no permitted development rights in respect of a change to another use class. Nevertheless, it is my opinion that the '*servicing, repair, rebuilding, dismantling, spraying and parking of motor vehicles*' is a use which falls squarely within Use Class B2 in Schedule 1 of the Town and Country (Use Classes) Order 1987 (as amended) (UCO) as a general industrial use '*for the carrying on of an industrial process*'.
12. I have therefore considered which, if any, use class the current activities on Plot B would fall into. A B2 use, as defined by the UCO is classified as a process for, or incidental to, '*the making of any article or part of any article*', '*the altering, **repairing, maintaining**, (my emphasis) ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, **breaking up** (my emphasis) or demolition of any article*' and '*the getting, dressing or treatment of minerals.*' The UCO also notes that where land is used for a purpose of any class specified in the Schedule, the use of that land for any other purpose in the same class does not involve development of the land.

¹ Ref: T/APP/C/91/B5480/617008

13. However, it seems to me that the current use of Plot B does not come within this definition, or that of a B8 use because, although it is used for the storage of demolition equipment in connection with the business, it also has properties akin to a scrap yard, where materials are brought to the site for later sorting and disposal. Such a use is *sui generis* (not falling within any other use class).
14. As noted above, the site area covered by the enforcement notice appeared to be used by three different businesses at the time of the site visit, rather than the single business granted planning permission for the B2 use in 1992.
15. However, from the evidence submitted by the appellant, together with the aerial photographs submitted by the Council, it is clear that there has been a continuing change of occupancy and distribution of uses across the site over a long period of time, such that it would be difficult to define any consistent areas of a particular use. Internal boundaries between different areas are often physically undefined and I noted at the site visit that they have changed again from those shown on the enforcement notice plan. Nevertheless, there has only been one enforcement notice issued covering the whole area originally granted the B2 permission, the whole site is still in a single ownership and all the appeals have been made by the landowner.
16. All the above factors lead me to conclude that, although there are 4 appeals for the various areas of the site, what has actually occurred is a change of use of a single planning unit in a B2 use to a mixed use comprising B8 storage and distribution and a *sui generis* demolition yard. Even if Plot B could be considered to be in a B2 use, there are nevertheless still two different uses covering the site and, therefore, the whole area covered by the enforcement notice is now in a mixed use which will, in itself, be *sui generis*. I shall take this into account when determining the appeals.

Reasons

Ground (b)

17. This ground of appeal is intended to be used when the appellant claims that the matters that the enforcement notice alleges to have occurred have not, in fact, done so. The enforcement notice, in respect of plots A and C, refers to the 'erection of sheds' and it appears that the appellant's main claim on this ground is that there have been no permanent buildings erected on the land in the last 12 years.
18. The only 'shed' that I saw on the site visit, apart from the structures formed from scaffolding poles and metal sheeting, was the building in the centre of Plot A and that is visible in the Google Street view images referred to by the Council in 2016. It has therefore been in existence since prior to the relevant date (i.e. 4 years before the issue of the enforcement notice) and would consequently be authorised, provided it was not facilitating an unauthorised change of use. I shall consider this further under ground (c).
19. The metal sheet fencing referred to in the notice had been removed at the time of my visit, but photographs show it previously in position and it is therefore still covered by the requirements. The height of the boundary fencing in some locations also exceeds the permitted height of 2m. All the other operational development referred to in the notice was present on the site at the time of the visit and any appeal on ground (b) in respect of them fails.

Ground (c)

20. As noted above, because the site covered by the single enforcement notice has now been divided into a number of smaller areas with different uses, it is consequently in a mixed use comprising *sui generis* (Plot B) and B8 (Plots A, C and D). Whilst there are some permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for a change of use of a building from B2 to B8, this does not apply in reverse and there are no permitted development rights for a change to a mixed use.
21. The appellant states that from 2005 when he purchased the site, the uses have remained the same, but also says that there was a lorry breaker and haulage yard on Plot B, and a lorry and van repairer, a car breaker and a scaffolding company on Plots A, C and D.
22. Therefore, there has been a change from the single authorised use as confirmed in 1992 to a variety of mixed use components which, even if similar, appear to have been very fluid and have even changed again since the final appeal comments were submitted in January 2022.
23. Therefore, such changes of use would require the grant of planning permission to authorise them, unless they were immune from enforcement action through the passage of time, and this will be considered under the appeals on ground (d) in subsequent paragraphs.
24. All the operational development enforced against (apart from the sheds mentioned under the appeal on ground (b)) is part and parcel of the changes of use. As it has not been demonstrated that the current mix of uses falls within the authorised B2 use class, there is a need for a separate grant of planning permission to authorise them and the appeal on ground (c) in respect of them subsequently fails.

Ground (d)

25. The aerial photographs confirm that the site as a whole has been in a commercial/industrial use, and largely covered by hardstanding, since at least 2007. There are also internal divisions visible on the photographs which suggest the site has been in different tenancies, as submitted by the appellant, since that time.
26. However, I have already concluded in previous paragraphs that the current mix of uses on the site has been subject to variations over the years since the planning permission for the use of the site for the servicing and repair of motor vehicles was granted. I have seen no evidence to demonstrate, on the balance of probabilities, that the current mix of uses, and their distribution across the site, has remained unchanged for the 10 years prior to the issue of the enforcement notice that would be needed to establish immunity from enforcement action.
27. In any event, I consider that the mixed use has clearly altered in recent years and affected the character of the site usage through the introduction of the increased number of portacabins, storage racks, containers and boundary fencing at heights that exceed those limited by the 1992 permission.

28. Nevertheless, the shed building on Plot A has been on site for a longer period than the current unauthorised uses and can be seen on the 2010 aerial photograph. It was not therefore, in my opinion, erected for the purpose of facilitating the current uses. For these reasons, whilst the requirement to remove the shed will be removed from the enforcement notice, the current uses and the other operational development associated with them are not immune from enforcement action and the appeals on ground (d) in respect of them fail.

Ground (a)

29. Paragraph 150 of the National Planning Policy Framework (the Framework) notes that changes of use are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This aim is reflected in the extant policies of the London Borough of Havering Local Plan 2016 – 2031 (LP).
30. At present the amount of development on the site, in particular the height of the stored scaffolding, the 2 storey portacabin offices and the general spread of items stored externally across the site is, I consider, having a detrimental impact on the openness of the Green Belt. Various photographs show that, whilst the site has clearly had a commercial or industrial use for many years, the original development occupied less of the site and was at a lower overall height. The operational development now supporting the various businesses far exceeds what was previously authorised.
31. The appellant submits that the impact of the current mix of uses is not dissimilar to that previously permitted but I disagree. The additional site coverage and level of activity from the mixed use identified above results from the use of the site for a variety of businesses, each of which require their own areas of ancillary accommodation and storage. It is also the case that the authorised use was restricted by condition so that the extent of the site covered by external storage was controlled.
32. As previously noted, there are limited permitted development rights for a change from a B2 to a B8 use, but it is the case that a *sui generis* use (as exists at present) is not interchangeable with Class B2 (general industrial) and there are no permitted development rights to change from one to another without an express grant of planning permission.
33. Also as noted above, the heights and site coverage of the external storage is very different from that allowed at the previous appeal. Much of the activity takes place externally whereas, previously, the motor repairs and servicing were subject to a condition that they should take place inside the existing building and the areas for the parking of vehicles were subject to the approval of the Local Planning Authority.
34. Use of the site for a B2 purpose, specifically maintenance and repair of motor vehicles and ancillary operations reasonably required for this has already been granted, but this would not extend to the increased site coverage and separate and independent B8 storage uses that exist at present, which, in my opinion, are having a detrimental impact on the openness and rural character of the area.

35. Whilst each identified area of the site is subject to a separate appeal on ground (a), I consider that they cannot be considered in isolation and the cumulative impact on the openness of the Green Belt, should each be allowed, must be taken into account. There is a distinct difference between the possibility of the whole site moving from one single use to another use permitted by the UCO or GPDO when compared to the division of the site into four separate uses, each of which could be occupied by a different tenant, with the resultant likelihood of an increase in site activity and coverage.
36. All the above leads me to conclude that the current change of use across the site is harming the openness of the Green Belt and represents inappropriate development in terms of the relevant policies in the Framework and the aims and objectives of the London Borough of Havering LP. The presumption against such development consequently applies.
37. I note that the site is home to a number of businesses and has been for some years but, as explained above, these are not immune from enforcement action and the appellant has not put forward any considerations that are sufficient to clearly outweigh the presumption against these inappropriate developments and amount to the very special circumstances needed to justify its retention. All the appeals on ground (a) therefore fail.

Ground (f)

38. This ground of appeal can only succeed if the steps required to be taken by the notice exceed what is required to rectify the breach of planning control. In this case the breach is an unauthorised change of use and the installation of unauthorised operational development. The requirements of the notice do not go beyond calling for the cessation of the unauthorised uses and the removal of the unauthorised items, stored materials and equipment that facilitate those uses. The appeals on ground (f) consequently fail.

Ground (g)

39. The appellant claims that the 3 months allowed by the enforcement notice is not long enough and asks for this to be extended to six months as the time for compliance. I consider that this would be a reasonable request given that there are at least 3 businesses to relocate and a large amount of equipment and materials to be moved. The appeal on ground (g) therefore succeeds and the enforcement notice will be varied accordingly.

Conclusions

40. For the reasons given above, I conclude that the sheds referred to in the allegations concerning Plot A and C are already authorised or did not exist when the notice was issued and that the period for compliance with the notice falls short of what is reasonable. The appeals on grounds (b) and (g) succeed to that extent. I shall therefore vary the enforcement notice prior to upholding it.

Katie Peerless

INSPECTOR