APPENDIX 2 - S/1145/05 - STAPLEFORD

Appeal Decision

Inquiry held and site visit made on 18 October 2005

by David C Pinner BSc DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date 02 NOV 2005

Appeal Ref: APP/W0530/C/05/2001784
Land at Hill Trees, Babraham Road, Cambridge, CB2 4AD

- 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 Fleet Cooke against an enforcement notice issued by South Cambridgeshire District Council.
- The Council's reference is E499.
- The notice was issued on 23 February 2005.
- The breach of planning control as alleged in the notice is without planning permission, materially changing the use of the land from agriculture to the storage of motor vehicles, caravans/mobile homes, containers, trailers, timber, bricks, scrap metal and other items not associated with or requisite for agriculture.
- The requirements of the notice are to remove from the site all motor vehicles, caravans/mobile homes, containers, trailers, timber, bricks, scrap metal and other items not associated with or requisite for agriculture.
- The period for compliance with the requirements is within two months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
- An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. All evidence was given under oath.

2. At my site inspection, I noted that the mobile home had not been levelled up and was not used for any purpose. Parked on the land were two transporter (beavertail) lorries; two vans; one small tipper lorry and a small flatbed lorry. There was a single car transporter trailer and a horse box trailer, a large van body, a JCB excavator, a dismantled nissen hut, various piles of timber, overgrown piles of bricks and stones, paving slabs, an oil tank, a generator and various items of scrap metal. None of the vehicles were taxed for use on the road and most looked as though they needed work before they could be used on the road again.

Ground (d)

3. The appellant acknowledges that he has only been using the appeal site in the manner described in the enforcement notice for about four years. The Council acknowledges that the appellant has had an association with Hill Trees for more than 10 years. In essence, the appellant's case is that the whole of the Hill Trees site comprises a single planning unit and that his use of different parts of it at different times, but in total for more than 10 years, for

storage purposes and as a site for a mobile home means that those uses have become lawful wherever within the overall site they may be taking place for the time being. His view is that the appeal site itself is a part of the overall Hill Trees site and does not comprise a separate planning unit.

4. The appellant appears to be relating the concept of the planning unit to land ownership or occupancy. The term "planning unit" has emerged through case law. Amongst other things, it provides a means of understanding the inter-relationship between various land uses. Ownership and occupancy of land do not necessarily have a bearing on what comprises a particular planning unit.

5. Applying the concept to Hill Trees, there are several separate planning uses. In particular, there is the residential use of the building and its curtilage; there is a separate use of the adjoining field for growing flowers and then there is the appellant's use of the appeal site for the purposes alleged in the enforcement notice. This use is not incidental to either the flower growing use or to the residential use of Hill Trees. In planning terms, although the areas used for the three uses might be occupied together in some way, the three uses are all independent of each other and undertaken on different parts of the Hill Trees site. Hence, each comprises a separate planning unit.

6. Where no planning permission exists for a particular use of land, the extent of the planning unit will need to be determined as a matter of fact and degree having regard in particular to the area of land actually being used for the purpose. In this case, there is no difficulty in identifying the extent of the relevant planning unit because the storage use is taking place within a fenced area that accounts for about half of the appeal site. The fact that this land is accessible via gates from other parts of Hill Trees has no bearing on the extent of the planning unit. The appellant accepts that the area now used for storage was unused agricultural/garden land until about 4 years ago. Clearly, his use of the land as described in the enforcement notice cannot have become lawful because it has not been undertaken on the land for at least 10 years. Similar uses of other parts of Hill Trees in the past cannot count towards the 10 year period with regard to the appeal site. The appeal on ground (d) therefore fails.

Ground (a) and the deemed application

7. The appeal site lies within the Green Belt where there are very strict planning policies to control development. The Council's policies mirror national Green Belt policies as set out in Planning Policy Guidance Note 2 *Green Belts* (PPG2). PPG2 sets out a presumption against inappropriate development in the Green Belt and establishes that such development is harmful by definition. Inappropriate development cannot be justified unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

8. PPG2 establishes that uses of land that do not preserve the openness of the Green Belt are inappropriate development. In this context, openness means undeveloped, rather than not enclosed. Hence, even land that is surrounded by woodland would be regarded as open land if it had not been developed. The use of the appeal site for storage purposes has involved the development of previously undeveloped land. It does not preserve the openness of the Green Belt and would not do so even it were screened by trees. Furthermore, the appeal site is part of an attractive landscape. The mobile home and the vehicles parked on the site are

highly visible from several vantage points and detract considerably from the character and appearance of the open countryside. The infilled chalk pit to the north has largely reverted to nature and provides no justification for developing the appeal site. The use is therefore harmful to the Green Belt because it represents inappropriate development, it harms the openness of the Green Belt and it harms the character and appearance of the open countryside. The appeal on ground (a) could only succeed if all of this harm were to be clearly outweighed by other considerations. In other words, the scheme would have to have substantial benefits.

9. The only benefit that the appellant put forward was that, if his use of the site were to be permitted, it would enable him to be on call to help the owner of Hill Trees, an elderly lady whom he has assisted for many years. That is an unconvincing argument because nothing stored on the site has any obvious connection with the appellant's purpose of assisting his friend. Furthermore, the personal benefit described can only be given limited weight and would not clearly outweigh the harm to wider public interests caused by the development.

10. I have considered other matters put forward, such as the possibility of the site eventually being screened by the trees that have recently been planted and the suggestion that an agricultural use of the land might have a similar visual impact. However, even if I were to agree with those points of view, at best, they might reduce the weight on the negative side of the balance of considerations. They would not represent any positive advantages that could weigh in favour of the development. I therefore conclude that very special circumstances do not exist to justify granting permission for this inappropriate development in the Green Belt.

Conclusions

11. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

12. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D C Rowe

INSPECTOR

APPEARANCES

For the Appellant:

Mr F Cooke	Appellant

For the Local Planning Authority:

Miss C Dunnett	Solicitor, South Cambridgeshire District Council
She called:	
Mr J Koch DipTP MRTPI	Principal Appeals Officer, South Cambridgeshire District Council

Interested Persons:

Cllr. C Nightingale	District Councillor for the Shelford area of South Cambridgeshire
Mr V Cornish	Stapleford Parish Council

DOCUMENTS

Document	1	List of persons present at the inquiry
Document	2	Council's letter of notification of the inquiry and list of those notified
Document	3	Objection letter from Colin C Bradford
Document	4	Appendices JK 1 to JK 11 to Mr Koch's Proof of Evidence
Document	5	Mr Cornish's statement